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U. S. Congress. Senate. Committee on Finance.

HEARINGS

BEFORE

THE FINANCE COMMITTEE

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OF THE

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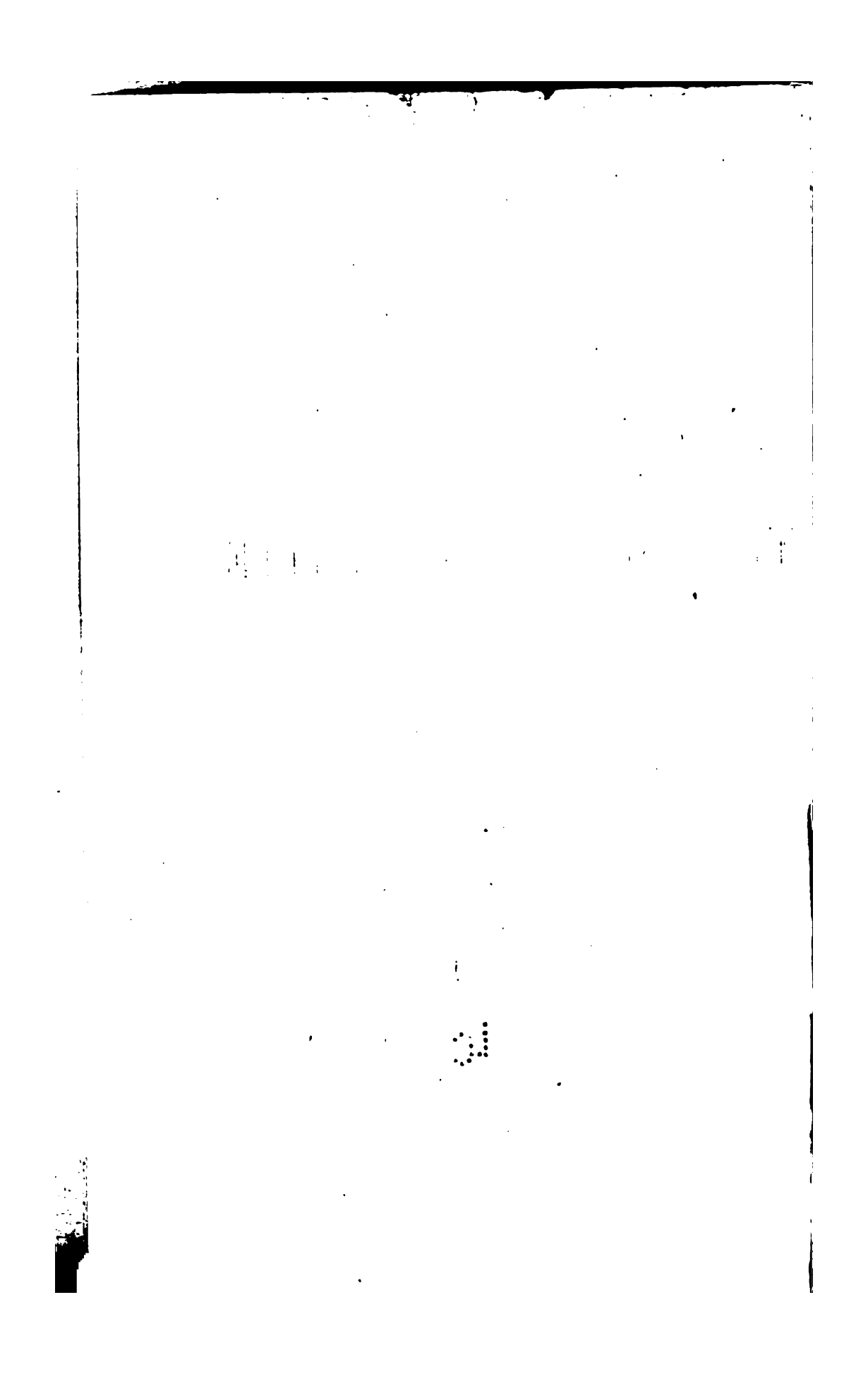

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HEARINGS BEFORE THE FINANCE COMMITTEE OF THE UNITED STATES SENATE ON THE MONETARY AGREEMENTS BETWEEN THE SECRETARY OF WAR AND THE GOVERNMENT OF PANAMA.

WEDNESDAY, *January 24, 1906.*

The committee met at 10.30 o'clock a. m.

Present: Senators Aldrich (chairman), Allison, Burrows, Spooner, Penrose, Daniel, Teller, Money, Bailey, and Gorman.

Hon. William H. Taft, Secretary of War, appeared before the committee.

The CHAIRMAN. The clerk will read the resolution under which the committee is proceeding.

The clerk read as follows:

IN THE SENATE OF THE UNITED STATES, *January 9, 1906.*

Resolved, That the Finance Committee of the Senate be instructed, and it is hereby instructed, to inquire into all the facts and circumstances concerning certain monetary and exchange agreements made by the Secretary of War with the Government of Panama and others, and to report such facts and circumstances to the Senate, together with their opinion as to the authority under which said agreements were made.

Attest:

CHARLES G. BENNETT,
Secretary.

STATEMENT OF HON. WILLIAM H. TAFT, SECRETARY OF WAR.

The CHAIRMAN. Mr. Secretary, we have asked you to come here to make such statements as you see fit to make in respect to this agreement.

Secretary TAFT. I should like, gentlemen, if I may, to first make a chronological statement of the facts, then to refer to the statutes and treaty giving authority, and then finally to come to the question of law which arises.

The Spooner Act, a copy of which I append as Appendix A, which directed the President to build the canal, was adopted June 28, 1902. That contemplated an agreement with the Government of Colombia. Acting, as was claimed, in accordance with that act, the treaty with Panama was negotiated, and Panama substituted for Colombia, and I assume, from the confirming acts of Congress, that it is to be construed exactly as if the Spooner Act had authorized the agreement specifically with Panama.

The Commission was appointed in March, 1904.

The CHAIRMAN. What time in March, do you remember?

Secretary TAFT. I can not tell you, except they held their first meeting March 22, 1904. The treaty was confirmed by the State on

the 23d of February, 1904. I append a copy of the treaty, marked "Appendix B."

The CHAIRMAN. You mean the treaty with Panama?

Secretary TAFT. The treaty with Panama; and my impression is that the commissioners were not appointed until after that treaty was confirmed.

Senator TELLER. When you speak of the confirmation by the Act of Congress, you mean the ratification of the treaty by the Senate?

Secretary TAFT. Yes, the ratification of the treaty and the subsequent act directing the President to take possession of the property there, passed April 28, 1904. I append a copy, marked "Appendix C."

The CHAIRMAN. What was the date of the Spooner Act?

Secretary TAFT. June 28, 1902. It may have been that the ratifications of the treaty were exchanged a little later than the time of confirmation—of course, they would have been—but the confirmation was on the 29th of March, 1904. I think the commission must have been appointed even before that, if their first meeting was held on the 22d of March, 1904.

Then the President issued instructions on the 9th of May, 1904, in which he directed the course to be taken by the Commissioners, and placed the action of the Commissioners under the general supervision of the Secretary of War. Congress that year adjourned, my recollection is, in May, but I can be corrected, if that is not so.

Senator BAILEY. It was in April, I think (April 28).

Secretary TAFT. Was it in April—the 28th of April?

Senator BAILEY. Yes.

Secretary TAFT. I remember that this order was made after Congress adjourned, and that what followed was done during a vacation. In June, 1904, I received notice that there was present, in New York, what was called a fiscal committee of the Republic of Panama, consisting of Mr. Arias and Mr. Morales, and another gentleman whose name I have forgotten. They had been sent up here by the Republic of Panama to invest the six millions of dollars out of the ten millions which had been paid before that by the Government of the United States, and that six millions was invested in mortgage securities in the city of New York at 4½ per cent interest.

Senator SPOONER. You mean that money had been paid by the United States to Panama?

Secretary TAFT. It had been paid by the United States to Panama and was being invested by this committee.

The CHAIRMAN. Do you remember what date it was that you first knew of the appointment of this commission?

Secretary TAFT. It was in June, 1904. It was quite late in June, I think. I do not remember exactly, but it was sometime in June. The committee was also authorized by their president to come and confer with me with reference to the passage of a law establishing a currency in the Isthmus. The convention, so called—I suppose it was a constitutional convention, distinguished in some way from their ordinary assembly, in that it was a body of an organizing capacity rather than merely legislative—had taken up a law establishing a currency, which had been defeated by a vote of 16 to 16.

These gentlemen were accompanied by Mr. William Nelson Cromwell, their counsel, who was at one time the counsel for the French

Panama Canal Company, and subsequently became counsel for the Republic of Panama, and especially for this committee, and negotiated their investments in New York when they invested this $6,000,000. He came over with this committee. I had present at the time Mr. Conant, who had been the financial expert with us in the Philippines, sent out for the purpose, and whom I wished to have for consultation at the time in order to advise me as to silver monetary questions, with which I do not claim to have been very familiar.

It was represented to me by these gentlemen that if we could in any way encourage it we could secure the adoption of a currency of a form which likened itself to the currency we had in the Philippine Islands, and I was very anxious to do that. I was familiar at that time with the history of the difficulties that the old French Panama Canal Company had had in reference to their exchanges in the Isthmus. When they went there, at first the normal exchange was 105. After they had been there and increased the number of laborers to ten or fifteen thousand the exchange varied from 105 to 180, so that there was a variation of 75 points. It added greatly to the cost of construction under the De Lesseps régime and encouraged a spirit of gambling in exchange on the Isthmus and led to unions between bankers and the hoarding of the silver coin to secure a higher price. It therefore seemed to me of the utmost importance to avoid a danger of that kind.

Later on the new French Panama Canal Commission did succeed, by agreements with bankers on the Isthmus, in reducing exchange in the Colombian silver to such a point that it was not excessive. That was an agreement not unlike the one we have here. It only varied from 5 to 10 per cent, or something of that sort. With the fiscal commission I had a discussion, the report of which is here; not entirely full, I think, but still notes taken stenographically of the conferences. There were present the fiscal committee, their counsel, Mr. Cromwell, Admiral Walker, who was present as chairman of the commission, and myself. I submit the report to the committee. (See Appendix D.) I had in mind at the time the question of not usurping the treaty-making power of the Senate, and at one point in this discussion (the notes of which I tender to the committee, because everything I have is at the service of the Senate committee, and I am anxious to bring out all the facts possible), it was suggested that we go before the Secretary of State. I said no—or in substance that is what I said. You will see what I did say. I said "No; I am acting for the commission. If you went to the Secretary of State, that would involve the assumption of the treaty-making power, which we wish to avoid." I considered in this matter that it was as if the commission were merely making a financial arrangement with a view to securing a proper medium in which to pay their men.

The agreement (see Appendix E) contains in its first section an agreement by the Commission, or by me for the Commission, to make this new coin legal tender on the Isthmus by appropriate legislation. It illustrates the infirmity of human memory, but I must say that if I had been asked about that before I referred to the agreement, I should have said that I recollected distinctly striking out that clause. But it is there, gentlemen, and I suppose I must admit that I signed the letter. I have not the signed original. That is in Panama; but my office copy, unsigned, shows no striking out of the clause. I only

have to say with respect to that that I did not carry it in my memory, having, as I say, this other impression; so that no act of the Canal Commission was ever suggested or passed attempting to do that thing, and the Republic of Panama has never asked us to take any such course. I may add that in describing the agreement to the President, in my report to him of my visit to the Isthmus, sent to Congress in December, 1904 (House Document No. 226), I made no mention of the legal-tender clause for the reason, I suppose, that in my memory it was not part of the agreement as signed. In other words, it has been treated either as if it were not in the agreement, or as if it did not mean what its words necessarily imply, and meant only that the Commission should take proper steps to give general currency to the coinage in the Zone.

The act which was passed did not accord with what was contemplated in my letter. I wrote this letter to the committee——

Senator BURROWS. What act do you refer to?

Secretary TAFT. I mean the act passed by the National Convention of Panama (see Appendix G) establishing this currency, for although it provided for the stipulated kind of currency, it did not put it into force, but left it to the President of the Republic to execute the act in his discretion. The fiscal committee had written me to say that they were in accord with my letter, but they were acting subject to confirmation. (See Appendix F.)

In the meantime there had arisen in the Republic a very distinctly hostile feeling toward the United States. It had arisen from a mistake made by the Administration. I share the responsibility of it.

Senator TELLER. You mean our Administration?

Secretary TAFT. Yes, sir; in the hurry that there was, necessarily, to organize the Zone, the mistake made was in putting in force the Dingley Act, which erected, so to speak, a tariff wall about a zone inside of another country, a zone not by the terms of the treaty removed from the sovereignty of that other country, because the treaty in effect provides that the sovereignty is not parted with. What it provides is that the United States shall exercise within that zone all the rights that it might exercise if it were a sovereign. It is a nice point, but with the Latin-American mind it is a point that is much larger and more important than it would be in the Anglo-Saxon mind; for the Latin-American mind and that of the Spanish descendant dwell on names, and, as I found out afterwards when I went down on the Isthmus, the question of titular sovereignty was of the utmost importance to them.

On our putting the Dingley act into effect there, by Executive order, although there was practically at that time no importation, the anticipated effect—anticipated by the merchants who had business there—was such that the Republic declined to carry out temporary agreements which Governor Davis when he first went there had been able to effect. One of those was the delimitation agreement, a most important agreement defining the limits of the cities of Colon and Panama, which had no boundaries. There was no Spanish, no Colombian, no Panamanian statute defining those limits, and it was necessary in order that we should live at all on the Isthmus with our neighbors that such delimitation agreement should be adopted. But in view of the change of public sentiment toward us on the Isthmus, the matter of carrying out the boundary agreement was suspended by the authorities of Panama.

We received in various ways information of the feeling of hostility against the American management, and the President thought it wise, therefore, to send me down to the Isthmus, and to see if by the presence of a Cabinet officer, indicating that the President regarded the matter as of some importance, the difficulty could not be smoothed out.

When I reached there I became convinced that the first thing to do was to revoke the order with respect to the Dingley bill, and I found a number of other troubles which I thought could be adjusted in an Executive order, with a corresponding decree on the other side complying with the conditions of the Executive order. In other words it was in substance an order on both sides by prior agrement, from which each might withdraw at any time. That order and its amendments I should be glad to call to your attention. (See Appendix H.) It is set out on page 17 of House Document 226, which is a part of the first annual report of the Isthmian Canal Commission. In the letter of transmittal the Executive order of December 3, 1904, is reported to the President, and by him to Congress. I shall come again to that order, if I may. It also occurs on page 202 of the report of the Isthmian Canal Commission of this year, Senate Document 127, Fifty-ninth Congress, first session.

Senator TELLER. You are now referring to the order that you issued by order of the President?

Secretary TAFT. Yes, sir.

Senator TELLER. As Secretary of War?

Secretary TAFT. Yes, sir; and it is through that order, really, that the provisions of this agreement have any effect at all. That agreement was made in June, but nothing was done under it, and we were obliged to get along with the Colombian silver for the comparatively few laborers we had there at that time until I went down, in December, 1904. The order was dated December 3, but was issued on the Isthmus. I cabled it up to the President and received his approval, and then issued the order from the Isthmus.

Senator ALLISON. That order is in the report of the Canal Commission for 1904, known as House Document No. 226?

Secretary TAFT. Yes, sir. I ought to say that all these Executive orders to which I refer were adopted by the Commission formally after the orders were issued.

Senator BURROWS. That is, approved by the Commission?

Secretary TAFT. Yes, sir; really adopted by them. They construed the order of the President to be a direction to adopt. The President has a right to control the action of the Commission under the Spooner Act, and the canal is to be constructed through a commission, and he subsequently appointed the Commission as the legislative body on the Isthmus so far as it had legislative power, and as the executive body over the Isthmus, subject to his control, or his control through the Secretary of War.

Senator SPOONER. And it would get whatever legislative power it might have from the act of Congress and not from the action of the President?

Secretary TAFT. Yes, sir; only that the President was authorized to designate the members of the Commission to exercise the civil and military control in the Isthmus in the manner directed by him, as the act says.

The CHAIRMAN. The act uses the term "rules and regulations."

Secretary TAFT. This is in section 2 of the act of April 28, 1904. (See Appendix C.) The first section directs the President to take possession of the territory.

Senator SPOONER. That act is not in force now?

Secretary TAFT. It expired by its terms at the close of the Fifty-eighth Congress. That is, not the first section, but the second did.

Senator SPOONER. Yes; the first section was accomplished. The things authorized by that section had been done, had they not?

Secretary TAFT. No, sir; not entirely.

Senator SPOONER. Well, no matter.

Secretary TAFT. I might say right here, because I intended to refer to it later, that the first section directs the President from time to time to occupy any lands and waters outside of said Zone which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said enterprise.

Senator SPOONER. That is a right granted by the treaty?

Secretary TAFT. Yes, sir; and the power is vested in the President and the duty is imposed on him of doing that thing.

Senator TELLER. You think that is a continuing duty, notwithstanding the clause that this act should be in force only for a certain time, and that time has expired?

Secretary TAFT. Yes, sir; undoubtedly it is, because you will see that the application of that clause with reference to the close of the Fifty-eighth Congress has no application whatever to the provisions of the first section. There is no doubt that the limitation is confined to the second section.

The Executive order in its recital was made subject to the action of Congress, and at its close contained a provision like this, which I will read you:

> That the operation of the order and its enforcement on the one hand, or a compliance with its conditions on the other, shall not be taken as a delimitation, definition, restriction, or restrictive construction of the rights of either party under the treaty between the United States and the Republic of Panama.

I was anxious to avoid that anything which was a mere temporary revocable order should as a construction of its terms affect that which had been provided in the treaty. I did not think that we under that order exercised all the power that the authorities of the United States might have under the treaty; and on the other hand the authorities of the Republic were anxious to avoid construction of their act as an admission of what we claimed to have, the equivalent of sovereignty on the Isthmus. So section 12, which I have read, met the views of both parties, and was put in there in order to show that this was a mere living agreement, a modus vivendi.

But that is what I construed to be the effect of the order issued on the one hand and the order issued on the other after negotiation and after a verbal statement that each would be satisfactory to the other. We had been sent down there to construct the canal; to expend $150,000,000 in so doing. We had been put, so to speak, in another man's house. We were put in a zone between which and a country of 250,000 inhabitants there was no visible border at all. As I have said, there were no known boundaries to the cities of Panama and Colon excluded by the treaty from the Zone, so that the treaty and the two laws together required us to move in and assume control of a territory altogether unbounded, when the facts were looked into, by

any definite description of any sort. Colon and Christobal—Christobal being now the town which is at the termination of the canal and Colon being that which was reserved out of the Canal Zone—are part of the same settlement. A street, on which the Panama Railroad runs, divides the two. We were obliged to establish municipal government for Christobal, as divided and cut off from Colon.

On the other hand, we were required under the treaty to look after the sanitation of Colon. There was a provision in the treaty that the Isthmian Government—the Government of the Republic—should see to it that the sanitation ordinances of the United States were enforced in Colon and Panama, and if they were not enforced, then the United States was given authority to go in and enforce them. The provision also was that if there was any disturbance in Colon or Panama it was the duty of the United States to go in and enforce public order. We were to introduce from 20,000 to 30,000 laborers, with their families, into a stretch of country that had practically no one in it. We were to enact harbor regulations. We were told to go in and take out of the Zone whatever lands seemed to us convenient or necessary, either for the sanitation of the Zone or the construction of the canal.

Senator BURROWS. Outside of the Zone?

Secretary TAFT. Outside of the Zone. Now, it seemed to me as plain as it could possibly be, with those powers and with those duties imposed upon us, that Congress could not have intrusted us with this work, that the Senate could not have confirmed the treaty without expecting that we were to establish with the authorities of that Republic, in whose house and in whose country we were to discharge these duties and perform this work, temporary agreements—agreements which should enable us to get along as neighbors, or as people occupying the same boarding house must get along; with agreements not which bound the Government, but with agreements which bound the agents of the Government in the discharge of the duties which they had to perform there. That was the theory upon which I made this executive order. That was the theory upon which we insisted, in this executive order, that the terms of this currency agreement should be carried out by the President of the Republic as a condition of this order. If he did not see fit to do that, then the order, so far as that went, failed of effect. It was inoperative by its terms. But I entered into that form of it for the purpose of not making it an agreement, but of making it a revocable arrangement completely subject, as any executive order is, to renouncement the next day.

Senator MONEY. Excuse me; you mean revocable without the consent of the other party?

Secretary TAFT. Yes, sir. Its nature as an executive order indicates that. It might not be fair to revoke it; it might not be revocable, but I think the power to revoke the order was unquestionable.

I have here a statement by the acting general auditor, Mr. Lewis, of the rates of exchange between United States currency and Colombian silver, on the one hand, and between United States currency and Panamanian silver, on the other hand. In this he states that the new Panamanian currency was put into circulation February 12, 1905. (See Appendix I.)

This agreement of June, 1904, made and enforced, as I have stated, conditionally through section 8 of the order of December 3, 1904, had the advantage of limiting the currency—the coinage of the cur-

rency—to 3,000,000 pesos, and provided that the Colombian silver of the Isthmus should be recoined to the extent of 3,000,000 pesos; and that that should not be exceeded except by the consent of the President of the United States—or I think, possibly, it says the Secretary of War.

It also provided that if the number of laborers on the Isthmus required the issuing of more currency, then by the same authority there might be issued by the Panamanian Government what was necessary up to a certain limit, but that it should not issue anything in excess of 3,000,000 pesos more—that is, a million and a half gold. That power has been exercised since the laborers have gone in there to the extent of issuing a million more.

It also provided that these coins must be coined in the Mint of the United States, which gave us the assurance of a uniformity of coinage, and that there would be no change from the ratio mentioned in the agreement of 900 to 1,000—I think that is the ratio, as I recollect it—of the purity of the silver. The new coins, as I have said, were issued in February of 1905. This brings us to April, 1905, after the adjournment of Congress, when the second agreement was made with the bankers. (See Appendix K.) I regard that only as a bankers' agreement. The Republic of Panama was made a party to the agreement for the reason that it was a large customer of the banks. The union of the Canal Commission with the Panama Railroad Company and the Republic of Panama on the one side in agreeing to furnish their exchange business to the bankers enabled them together to make a better arrangement with the bankers than if the bankers were assured only of the custom of one or the other of the parties.

Senator BURROWS. What bankers do you allude to?

Secretary TAFT. I was about to come to that. The International Bank of New York City, which is a bank for foreign banking, came to me and asked that it be made the agent of the Government on the Isthmus. Well, I had no prejudice against the bank. It had been doing business in Manila, and was, so far as I knew, a strong financial institution; and they had already established a branch there with a view to being made the Government agent.

Senator DANIEL. In Panama?

Secretary TAFT. In Panama. I am not sure whether the Secretary of the Treasury did make it an agent or not. But I declined to consent that it should be made sole agent for the transactions of the Government for several reasons—for two reasons, at least. First, it was essential for us, so far as we could, to cultivate good relations with the people on the Isthmus. If we brought a banking institution of our own down there and did all our banking through them, which was bound to be the greater part of all the banking there, it would be a source of constant friction.

Second, we could very well understand that it would become necessary, as it has become necessary, for us to have $500,000 worth of silver every two weeks.

Senator ALLISON. That is necessary in order to pay our laborers?

Secretary TAFT. Yes, sir. The strain of supplying that currency, concentrating on the Isthmus, was more than a new American bank could carry. In a Latin-American country, in a country where they are accustomed to the use of silver, a good deal of silver is hoarded;

more than with us. It disappears from the circulation. At least we found that in the Philippines, and I thought it would be the same here. Therefore I was exceedingly anxious that we should have the assistance of all the old local banks to gather together enough silver to enable us to make these very large payments—I say very large; very large for a country like that, which does very little business of its own—in order that the price of the coin which we wished to use should not increase.

As it is, under this bankers' agreement which we have made and in which we have the assistance of all the bankers on the Isthmus, they agree to furnish us silver for exchange on New York at two to one, in accordance with the legal ratio. That was the reason why that bankers' agreement was made; made exactly—in my judgment at the time, and still—as the agreement was made with reference to the delimitation of the boundaries of Colon and Panama; exactly as the agreements have been made with reference to the sewage and with reference to the construction of the water supply; with reference to the shutting up of the streets of the city of Panama while the water and sewers are being put in there; exactly as the agreement was made by the order in which, without waiting to see whether the ordinances of the United States could be enforced, the Panama authorities turned over the sanitation of Colon and of Panama, and the quarantine of those harbors, to the officers of the United States. I can not mention, because they are so numerous, the other various tentative arrangements that have been made because of the necessity of the situation. And that situation grew out of the laws and the treaty—the two laws and the treaty—which made it mandatory upon the President of the United States to go there and attempt to construct the canal.

The CHAIRMAN. What is the date of that contract?

Secretary TAFT. I think it was the 29th of April, 1905.

The CHAIRMAN. Was that after the expiration of the act you have named?

Secretary TAFT. Yes, sir; that was after the legislative power of the Commission was exhausted; so that it was made by the Canal Commission (as it really was and would have been under any circumstances, whether it exercised legislative powers or not) as a business agreement; as a means to secure the money to pay the wages of laborers there without unnecessary cost of exchange.

Senator ALLISON. Have you put that agreement into the testimony?

Secretary TAFT. Yes, sir; it will be found in Appendix K. That is the agreement that I think was referred to in the resolution. I am not sure.

Senator BAILEY. That is one of them?

The CHAIRMAN. That is one of them.

Secretary TAFT. I ought to say, in respect to that agreement, that in accordance with my expectation the International Bank was unable, in a number of instances, to comply with its own agreement. They defaulted. They could not get the silver and had to turn the matter over to their colleagues in the agreement, and the latter supplied it. That indicates that the gathering of silver is by no means an easy matter on the Isthmus.

Senator MONEY. Was the difficulty of getting the silver on account of the difficulty of coining it?

Secretary TAFT. No, sir; it is on account of the distribution of it among the people and tradesmen on the Isthmus and the difficulty of getting it back into banking circulation.

Senator MONEY. I suppose a good deal of that silver left immediately for Jamaica and the Barbados and other places?

Secretary TAFT. It is possible. At any rate we were pressed to request and permit the coinage of a million more pesos, to which we consented. But when I was last down on the Isthmus the bankers came again to have the limit raised and I declined to do it. It did not seem to me that the situation was such as to justify it.

Senator TELLER. You are speaking now of the Panama money?

Secretary TAFT. Yes, sir.

Senator TELLER. How much have they issued, all told?

Secretary TAFT. They have issued now 4,000,000 pesos.

The CHAIRMAN. That is $2,000,000?

Secretary TAFT. Yes, sir.

Senator TELLER. Do they issue them as pesos?

Secretary TAFT. The law provides that the standard of value shall be a coin exactly equivalent to our gold coin, the dollar, called there a "balboa," from the discoverer of the Pacific.

Senator TELLER. Yes.

Secretary TAFT. And whose medallion is on the coins.

Senator MONEY. How does that compare in value with the peso?

Secretary TAFT. That is double the peso. The peso is 50 cents, half of the gold balboa or the dollar.

Senator MONEY. The gold dollar, you say? I thought you meant the silver dollar.

Secretary TAFT. No; the gold dollor.

Senator ALLISON. They do not coin that?

Secretary TAFT. No, sir. They coin what they call a peso, which is about equivalent to the Mexican peso, its declared value being 50 cents, or one half of the Balboa.

Senator TELLER. That is declared by the Panama Government?

Secretary TAFT. Yes, sir; by the law of the Republic of Panama. They also have as a legal tender the gold dollar of the United States, as you will see by this law, which is included in this statement.

Senator TELLER. Which of course they do not coin.

Secretary TAFT. Which they do not coin. They coin for themselves the Balboa, but they admit into their legal currency the gold dollar of the United States as the legal standard of value. The parity is to be maintained under their system between the peso, which is just one-half, by law, in value, of the gold dollar or the gold Balboa, and 50 cents gold.

Senator TELLER. It contains how much silver?

The CHAIRMAN. Twenty-five grams.

Senator TELLER. Silver?

The CHAIRMAN. Yes. It weighs 25 grams.

Secretary TAFT. When we adopted the peso I think it was valued at about 42 to 50 cents.

Senator MONEY. Has it not been all the time a little better than the silver dollar?

Secretary TAFT. I think probably it has.

The CHAIRMAN. I think at the present moment it is at a little less than par as compared with gold. At the time of its adoption the seigniorage on the coinage would have amounted to 15 or 16 per cent.

Senator BAILEY. Two pesos are a little less than our American dollar. The fact of it is that when the arrangement was made the silver coinage of that country was overvalued. The appreciation of the price of silver since that agreement was made probably makes it now a little undervalued, and that appears to be the case, because, as the Secretary says, it is difficult to get it. If it was undervalued there would be less difficulty to keep it in circulation.

Secretary TAFT. That is quite true, and that is the difficulty we are having in the Philippines now.

Senator BAILEY. And I think the appreciation since the agreement was made has probably made it a little different.

Secretary TAFT. The fractions are a little different. When the agreement was made, as I recollect it, the difference in the intrinsic value of the coin and the legal value which it was hoped to maintain was as 42 cents to 50.

Senator TELLER. Eighty-four cents to the hundred?

Secretary TAFT. Yes, sir.

Senator BAILEY. It was undervalued about 15 or 16 per cent.

The CHAIRMAN. The Mexican basis is 32 to 1, the same as the Philippine, you know. They have had trouble on account of the exportation and melting down of silver.

Senator BAILEY. The truth of it is that under the present coinage value there is no necessity for the United States or any other Government to make any agreement about maintaining its parity. Instead of being under obligations to maintain the value of it it would be necessary to readjust it to prevent the use of it in other ways.

Senator TELLER. Would it not have been better to have had Congress provide a currency for that particular region?

Secretary TAFT. I think it would.

Senator TELLER. Would you not have had a currency better adapted to the conditions down there to-day?

Secretary TAFT. I think it would be better always to have provisions made by Congress which shall enable the Executive to carry out his duty. But the question that is always presented to the Executive is how his duty shall be carried out, and whether there is in the law, or whether he can find in the law, as the implication from the duty imposed upon him, authority sufficient to enable him to discharge his duty, or whether he has to say, "Congress has not given me that power with which I could do this thing they have enjoined upon me, so that my hands are tied."

Senator TELLER. He could come back to Congress, then?

Secretary TAFT. Yes; he could come back to Congress. This very agreement was submitted to Congress last year. It was contained in the report. Unfortunately—I say unfortunately because I am very sorry that it was not—the whole agreement was not set out. But, with the exception of the legal-tender clause that was, as I have said, inoperative, those features of it which are made the subject of discussion as to the power appear on page 9 of my letter to the President, which was transmitted to Congress some fourteen months ago and was referred in the Senate to the Interoceanic Canals Committee and

in the House was referred to the Committee on Interstate and Foreign Commerce, and printed as House Document No. 226.

It is not necessary, because you gentlemen are much more familiar with legislation than I am, for me to say that at times Congress leaves the Executive to do the best he can to work out something which Congress expects him to do. For instance, let me call attention to this very act of April 28, 1904. You gave us power to govern the zone until the end of the Fifty-eighth Congress and after that time you left us without any direction at all.

Senator SPOONER. Or any statutory power outside of the canal act?

Secretary TAFT. Yes, sir: or any statutory power outside of the canal act.

Senator ALLISON. That was on the supposition that we would legislate in the short session, and everybody supposed we would.

Secretary TAFT. I am not finding fault with Congress, but I am simply telling you the situation as it was for the Executive.

Senator TELLER. We passed an act, but the House declined to take it up.

Senator ALLISON. I thought we did.

Senator TELLER. And we are now being blamed as a Senate because that has not been done.

Secretary TAFT. I understand the position to be that there was general authority for the President, as charged with the execution of the laws and looking after the property of the United States, to retain control there, and that is what he has attempted to do.

I ought to add on the question of motive that what led me to take this action in respect to the currency and advise the President to confirm it was our experience in the Philippines in the same matter—while I was there silver fluctuated from less than 2 to 1 to 165 to 1—and the difficulties that we had in paying our employees and the complaints, and the just complaints, that we met when we had at one time to keep accounts in three different currencies. All of that stood before me as a possibility if we did not take some means of securing a suitable currency in which to expend these immense sums. As to the legal-tender provision, with respect to that, all I have to say is that it is there, and I seem to have agreed to it, but as it looks to me now it was an inadvertence; and as it was never in force, and as it never was treated as a part of the currency agreement it seems to me that it can hardly appear here as a subject of other than academic discussion. I certainly should not now approve its presence there.

The attempt on the part of the Commission to have determined a legal tender there would perhaps have been doubtful, even under the broad language of the second section of the act of April 28, 1904. And, secondly, still more doubtful would have been the agreement to bind itself to such legislation. One question is whether the Commission had the power to declare what should be legal tender for future contracts in the Zone, and the second question is, even if it had, had it the power in the agreement to agree what it should do in advance? If I was wrong in that I am glad to admit it, and can only say that under pressure, and in the very strenuous times that I have had to go through in determining these matters, I made a mistake. I do not deny it. I am willing to admit my mistakes when I am shown that they are mistakes.

There is a discussion of this agreement in my report to the President of December, 1904 (House Doc. 226), which I would like to put in the record at this point. It is as follows:

Section 8 provides for the execution of the currency agreement made in Washington June 20, 1904, by the President of the Republic, and for the abolition of the tax of 1 per cent on gold coin exported from the Republic of Panama. This was necessary to make it operate properly. The currency agreement puts in force a system similar to the one in the Philippine Islands, by which a Panama peso of the intrinsic value of 40 cents is declared equal in value to 50 cents gold, and is maintained at that value by the Government of Panama with the assistance of the United States authorities. An export tax on gold, however, would interfere with the free exchange of gold between Panama and the countries of the world, and so would make the maintenance of the parity with gold more difficult, for it would always increase the cost of exporting gold from Panama at least 1 cent on the dollar.

The provision for securing the parity in the agreement is that the Republic of Panama shall deposit 15 per cent of its issue of silver pesos in a New York bank for the purpose of maintaining the parity, and that the seigniorage on all subsequent pesos, which can, by the agreement, only be coined at the instance of the United States authorities, shall be used for the same purpose. As the coinage does not exceed one million and a half gold, and the United States has agreed to assist in the maintenance of the parity by drafts on New York, I do not see that the United States would run any particular risk if it united with the Government of Panama in an agreement to redeem all Panama currency of the new issue by the payment of New York sight drafts in gold at par and a maximum of exchange equal to the cost of exporting gold from Panama to New York—that is, the cost of transportation and insurance. In that way it seems to me that the exchange on New York could always be kept down to the cost of the exportation of gold, and this would in effect maintain the parity. With your permission, after a conference with some experts on coinage, I shall issue an order to the Commission giving some details as to the course which they should take in this matter of preserving the parity and preventing the enormous fluctuations of exchange that so greatly impede the legitimate business in the Isthmus, and which would seriously interfere with the monetary arrangements of the Canal Commission in the construction of the canal.

At 12 o'clock m. the committee adjourned until Saturday, January 27, 1906, at 10.30 o'clock a. m.

APPENDIX A.

ACT AUTHORIZING THE CONSTRUCTION OF AN ISTHMIAN CANAL.

The Isthmian Canal Commission is organized and is acting under the provisions of the act of Congress approved June 28, 1902, as follows:

AN ACT To provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained.

SEC. 2. That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deeem reasonable, perpetual control of a strip of land, the territory of

the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip, and the ports at the ends thereof, to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

The President may acquire such additional territory and rights from Colombia as in his judgment will facilitate the general purpose hereof.

SEC. 3. That when the President shall have arranged to secure a satisfactory title to the property of the New Panama Canal Company, as provided in section one hereof, and shall have obtained by treaty control of the necessary territory from the Republic of Colombia, as provided in section two hereof, he is authorized to pay for the property of the New Panama Canal Company forty millions of dollars, and to the Republic of Colombia such sum as shall have been agreed upon, and a sum sufficient for both said purposes is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall then, through the Isthmian Canal Commission hereinafter authorized, cause to be excavated, constructed, and completed, utilizing to that end, as far as practicable, the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors. That the President is authorized for the purposes aforesaid to employ such persons as he may deem necessary, and to fix their compensation.

SEC. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall, through the said Isthmian Canal Commission, cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean. Said canal shall be of sufficient capacity and depth to afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also construct such safe and commodious harbors at the termini of said canal as shall be necessary for the safe and convenient use thereof, and shall make such provisions for defense as may be necessary for the safety and protection of said harbors and canal; and such sum or sums of money as may be agreed upon by such treaty as compensation to be paid to Nicaragua and Costa Rica for the concessions and rights hereunder provided to be acquired by the United States are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall cause the said Isthmian Canal Commission to make such surveys as may be necessary for said canal and harbors to be made, and in making such surveys and in the construction of said canal may employ such persons as he may deem necessary, and may fix their compensation.

In the excavation and construction of said canal the San Juan River and Lake Nicaragua, or such parts of each as may be made available, shall be used.

SEC. 5. That the sum of ten million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, toward the project herein contemplated by either route so selected.

And the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars, should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted.

SEC. 6. That in any agreement with the Republic of Colombia, or with the States of Nicaragua and Costa Rica, the President is authorized to guarantee to said Republic or to said States the use of said canal and harbors, upon such terms as may be agreed upon, for all vessels owned by said States or by citizens thereof.

SEC. 7. That to enable the President to construct the canal and works appurtenant thereto, as provided in this act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission. Of the seven members of said Commission at least four of them shall be persons learned and skilled in the science of engineering, and of the four at least one shall be an officer of the United States Army, and at least one other shall be an officer of the United States Navy, the said officers respectively being either upon the active or retired list of the Army or of the Navy. Said Commissioners shall each receive such compensation as the President shall prescribe until the same shall have been otherwise fixed by the Congress. In addition to the members of said Isthmian Canal Commission the President is hereby authorized, through said Commission, to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work. The compensation of all such engineers and other persons employed under this act shall be fixed by said Commission, subject to the approval of the President. The official salary of any officer appointed or employed under this act shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this act. Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports of all their actings and doings and of all moneys received and expended in the construction of said work and in the performance of their duties in connection therewith, which said reports shall be by the President transmitted to Congress. And the said Commission shall furthermore give to Congress, or either House of Congress, such information as may at any time be required either by act of Congress or by the order of either House of Congress. The President shall cause to be provided and assigned for the use of the Commission such offices as may, with the suitable equipment of same, be necessary and proper, in his discretion, for the proper discharge of the duties thereof.

SEC. 8. That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures authorized by this act (such proceeds when received to be used only for the purpose of meeting such expenditures), the sum of one hundred and thirty million dollars, or so much thereof as may be necessary, and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in gold coin at the pleasure of the United States after ten years from the date of their issue, and payable thirty years from such date, and bearing interest, payable quarterly in gold coin, at the rate of two per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That said bonds may be disposed of by the Secretary of the Treasury at not less

than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same.

Approved, June 28, 1902.

APPENDIX B.

TREATY WITH THE REPUBLIC OF PANAMA.

The treaty between the United States and the Republic of Panama, under which the construction of the Panama Canal has been made possible, was signed at Washington on November 18, 1903, was ratified by the Republic of Panama on December 2, 1903, and by the United States Senate on February 23, 1904, and is as follows:

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries—

The President of the United States of America, John Hay, Secretary of State, and

The Government of the Republic of Panama, Philippe Bunau-Varilla, envoy extraordinary and minister plenipotentiary of the Republic of Panama, thereunto specially empowered by said Government, who, after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The United States guarantees and will maintain the independence of the Republic of Panama.

ARTICLE II.

The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles, extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the said Zone beginning in the Caribbean Sea three marine miles from mean low-water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low-water mark, with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the Zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation, and control of any other lands and waters outside of the Zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the Zone above described, and in addition thereto the group of small islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco.

ARTICLE III.

The Republic of Panama grants to the United States all the rights, power, and authority within the Zone mentioned and described in Article II of this

agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.

ARTICLE IV.

As rights subsidiary to the above grants, the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes, and other bodies of water within its limits for navigation, the supply of water or water power or other purposes, so far as the use of said rivers, streams, lakes, and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal.

ARTICLE V.

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance, and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

ARTICLE VI.

The grants herein contained shall in no manner invalidate the titles or rights of private landholders or owners of private property in the said Zone or in or to any of the lands or waters granted to the United States by the provisions of any article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said Zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States, in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation, and protection of the said canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said canal or the Panama Railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed, or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damges to them shall be based upon their value before the date of this convention.

ARTICLE VII.

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain any lands, buildings, water rights, or other properties necessary and convenient for the construction, maintenance, operation, and protection of the canal, and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States, may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal and railroad. All such works of sanitation, collection and disposition of sewage, and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees, shall be authorized to impose and collect water rates and sewerage rates, which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years; and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon, respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent that water

rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character, prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

ARTICLE VIII.

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the Zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

ARTICLE IX.

The United States agrees that the ports at either entrance of the canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all times so that there shall not be imposed or collected custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation, and protection of the main canal, or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the canal and for other works pertaining to the canal.

ARTICLE X.

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the canal, the railways and auxiliary works, tugs and other vessels employed in the service of the canal, storehouses, workshops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the canal and railroad and auxiliary works.

ARTICLE XI.

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

ARTICLE XII.

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

ARTICLE XIII.

The United States may import at any time into the said Zone and auxiliary lands, free of custom duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the canal and auxiliary works, and all provisions, medicines, clothing, supplies, and other things necessary and convenient for the officers, employees, workmen, and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the Zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

ARTICLE XIV.

As the price of compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

ARTICLE XV.

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and, the President of the Republic of Panama shall nominate two persons, and they shall proceed to a decision; but in case of disagreement of the commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments, who shall render the decision. In the event of the death, absence, or incapacity of a commissioner or umpire, or of his omitting, declining, or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the commission or by the umpire shall be final.

ARTICLE XVI.

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention, and delivery within said Zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies, or misdemeanors without said Zone and for the pursuit, capture, imprisonment, detention, and delivery with-

out said Zone to the authorities of the United States of persons charged with the commitment of crimes, felonies, and misdemeanors within said Zone and auxiliary lands.

ARTICLE XVII.

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the canal enterprise, and for all vessels passing or bound to pass through the canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

ARTICLE XVIII.

The canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by section 1 of article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

ARTICLE XIX.

The Government of the Republic of Panama shall have the right to transport over the canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama or of the police force charged with the preservation of public order outside of said Zone, as well as to their baggage, munitions of war, and supplies.

ARTICLE XX.

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens or subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

ARTICLE XXI.

The rights and privileges granted by the Republic of Panama to the United States in the preceding articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other governments, corporations, syndicates, or individuals, and consequently if there should arise any claims on account of the present concessions and privileges or otherwise the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

ARTICLE XXII.

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the canal under Article XV of the concessionary contract with Lucien N. B. Wyse, now owned by the New Panama Canal Company, and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms, and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above-mentioned party and companies, and all right, title, and inter-

est which it now has or may hereafter have in and to the lands, canal, works, property, and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future, either by lapse of time, forfeiture, or otherwise, revert to the Republic of Panama under any contracts or concessions with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company, and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama, and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

ARTICLE XXIII.

If it should become necessary at any time to employ armed forces for the safety or protection of the canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ARTICLE XXIV.

No change either in the government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject-matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other government or into any union or confederation of states, so as to merge her sovereigty or independence in such government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ARTICLE XXV.

For the better performance of the engagements of this convention and to the end of the efficient protection of the canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

ARTICLE XXVI.

This convention, when signed by the plenipotentiaries of the contracting parties, shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

APPENDIX C.

[PUBLIC—No. 190.]

AN ACT To provide for the temporary government of the Canal Zone at Panama, the protection of the canal works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized, upon the acquisition of the property of the New Panama Canal Company and the payment to the Republic of Panama of the ten millions of dollars provided by article fourteen of the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the twenty-sixth day of February, nineteen hundred and four, to be paid to the latter Government, to take possession of and occupy on behalf of the United States the zone of land

and land under water of the width of ten miles, extending to the distance of five miles on each side of the center line of the route of the canal to be constructed thereon, which said zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, and also of all islands within said zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and, from time to time, of any lands and waters outside of said zone which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal, or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation, and protection of said enterprise, the use, occupation, and control whereof were granted to the United States by article two of said treaty The said zone is hereinafter referred to as "the Canal Zone." The payment of the ten millions of dollars provided by article fourteen of said treaty shall be made in lieu of the indefinite appropriation made in the third section of the act of June twenty-eighth, nineteen hundred and two, and is hereby appropriated for said purpose.

SEC. 2. That until the expiration of the Fifty-eighth Congress, unless provision for the temporary government of the Canal Zone be sooner made by Congress, all the military, civil, and judicial powers, as well as the power to make all rules and regulations necessary for the government of the Canal Zone, and all the rights, powers, and authority granted by the terms of said treaty to the United States shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone and maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion.

Approved, April 28, 1904.

APPENDIX D.

NOTES OF A MEETING HELD IN THE OFFICE OF THE SECRETARY OF WAR, JUNE 11, 1904.

Secretary TAFT. Have you any idea of the amount of silver that is now in circulation there?

Mr. ARIAS. About two and a half millions.

Secretary TAFT. Of gold?

Mr. ARIAS. No, of pesos.

Secretary TAFT. How many people are there on the Isthmus?

Mr. ARIAS. About 350,000 in the Republic.

Secretary TAFT. You think there are about 5 pesos a head?

Mr. ARIAS. About 8 pesos per capita.

Secretary TAFT. That would be about 3,000,000 pesos. Admiral Walker, how much do you suppose your going in there would add to the demand for the peso?

Admiral WALKER. Well, it would add considerably. We should use it. We would pay our men with it.

Secretary TAFT. Would you pay every week or every month?

Admiral WALKER. Probably twice a month.

Secretary TAFT. Would you pay all your men in the peso?

Admiral WALKER. Yes; we should pay in that way probably all the people we employed down there. The people sent down from here we should pay once a month in gold or in United States currency, but the laborers and the people of the Isthmus would go on the silver roll and be paid every two weeks.

Secretary TAFT. Of course it is impossible to say what that roll would amount to?

Admiral WALKER. We could count on having in our employ down there somewhere from 12,000 to 20,000 men.

Mr. BARRETT. Camp followers would add 5,000 more, probably.

Secretary TAFT. The number of people would be a great deal in excess of the laborers. It would take about 20 pesos per capita every half month—about 400,000 pesos would be disbursed every half month?

Admiral WALKER. Yes.

Secretary TAFT. That would about double the circulation down there?

Admiral WALKER. Yes, fully.

Mr. BARRETT. The increase of the population generally would be very marked.

Secretary TAFT. Your idea, is it not, is simply to recoin the existing silver?

Mr. CROMWELL. Yes, sir; and to limit it.

Secretary TAFT. Don't you think you might have a provision that you could double it? You might safely do that if you retain what is there. You could retain a good deal more than that on a million and a half deposits, but what I am afraid of is that it would double the demand for silver, possibly treble it, because it will be very active.

Mr. ARIAS. We can not afford to have a deposit of one and a half millions. We need every cent of the money in the country at present. By the constitution, out of the $10,000,000 we have to set apart six million, to be placed in securities giving annual fixed interest, so it can not be diverted to other purposes. With this balance we have to do everything.

Secretary TAFT. How much would be made from seigniorage?

Mr. CONANT. It would raise the value of the peso from 42 to 50 cents.

Secretary TAFT. Then they would make no money unless they increased their circulation on bullion. In that case they would make from 10 to 12 per cent on the silver bought.

Mr. CROMWELL. This subject has been very deeply considered by these gentlemen; not only by the gentlemen present, but by distinguished men in the Isthmus. It was considered by their convention; and a bill has been prepared by the Government, submitted, and is under consideration. That bill is very intelligent. I suggest Mr. Arias read and explain to you the measure pending. The convention is standing ready; the bill is here; if this form is acceptable it will be cabled there and probably passed. In other words, we have the measure on the table, and this conference may put it in shape where it will be adopted.

The bill which you hold is the original bill presented in March last by the Government, as a government measure, to the convention then assembled as a lawmaking body. That measure was not passed. It stopped at the reading of the first clause. It, however, developed a strong support. Then there was introduced, April 25, a second measure, called the "Balboa bill," called by that name because the draftsman designated the new dollar as the "Balboa" dollar, and that was passed.

Secretary TAFT. Was that a gold dollar or a silver?

Mr. CROMWELL. Silver. Those two measures were on the table of the convention when the whole subject was referred to a second committee, taking up both measures. That committee, only two or three weeks ago, gave its support and recommended the adoption of the original bill, with a few changes. That is the state of affairs to-day. It came on for debate; it was debated, and it failed to pass because of the tie vote, the total membership being 32, 16 voting for and 16 against. You will see, then, that the state of legislation is this—that that measure which you hold, slightly amended, has received the indorsement of one-half of the legislature.

Secretary TAFT. The "balboa" bill, so called, provided, as our friend says, for a gold standard of 50 cents, with a silver coin, the parity of which was to be maintained with that 50 cents gold. Was there any provision in that bill for a security to the world that it was to be maintained?

Mr. ARIAS. There was to be a fund of $100,000 that was to be kept in the treasury intact.

Mr. CROMWELL. The essence of this bill is to establish the gold dollar of the United States standard. The issue is limited to a conversion of the outstanding silver coinage, and the ratio is maintained by the conversion at a fixed figure, in the bill named at 225, but it may be amended later on to a different figure.

Secretary Taft then read the bill, during which the following remarks were made:

Secretary TAFT. (After section 2.) In other words, the bill proposes the actual coinage of a dollar which shall be equal in fineness and size to that of the United States, with different insignia?

Mr. CROMWELL. Yes.

Secretary TAFT. But that the United States dollar itself shall be legal tender exactly as your own?

Mr. CROMWELL. Yes.

Secretary TAFT. (After section 6.) Now that limits the power of the Government to issue fractional currency beyond the amount of Colombian dollars, half dollars, quarter dollars, and ten-cent pieces that there are now in circulation in the Isthmus?

Mr. CROMWELL. Yes, sir.

Secretary TAFT. That is, you can not recoin anything that is not the product of the present coin in circulation in the Isthmus.

Mr. CROMWELL. No, sir.

Secretary TAFT. You could not send out under that and buy a lot of silver in Bogota and recoin it?

Mr. CROMWELL. No, sir.

Mr. CONANT. Mr. Arias explains that his theory is the Panama money would not be used to any considerable extent in the Canal Zone, and the two countries would make their money interchangeable. But the result would be that the Panama peso would be twice the size of the United States peso.

Secretary TAFT. (After section 8.) In other words, the Government obligates itself to maintain the legal parity of gold and silver and leaves to the Executive the power to determine what measures are necessary.

* * * * * * *

You would wish to facilitate the exchange of the old coin for the new, and in order to do so you want to furnish to those who want to exchange a slight motive for making the exchange—that is, to give them a little more than the coin is worth in ordinary exchange.

Mr. ARIAS. We want to make the conversion as economically as possible. If you take the Colombian money and move it to New York and exchange it for bullion, you would be at a loss. At that rate between the two values there is a difference in favor of the Government of about 4 per cent, but that does not cover the expense of shipping and reshipping the coin.

Secretary TAFT. How are you going to induce them to bring the money in?

* * * * * * *

Secretary TAFT. We have had this same question in the Philippines, where we had the Mexican money, which corresponds, so far as our desire to get rid of it is concerned, with your Colombian money. In the islands we have also had the Spanish-Filipino money, which has circulated on an equality with the Mexican money at its intrinsic value. The difficulty that we have had is in inducing anybody to give us that Mexican or Spanish-Filipino money and turn it over to us in order that we might return our new dollar, and the reason why it is difficult to induce them is that whether you abolish the legal-tender character of the money or not, it still buys things in the market. They go down to the abaca provinces, and they can buy as many pounds of hemp with the Mexican dollar as they can with the new dollar. It is the ignorance of the people as to the exact value of the coinage that enables the speculators—the exporters—to go down and buy at Mexican rates and turn around and sell at gold rates at Manila. Therefore there is every motive for those men not to turn over the old money at all.

Mr. ARIAS. But the Colombian dollar has not the merit of the Mexican.

Secretary TAFT. But it is money that buys things. As long as your ignorant people of the 350,000 see a big, round silver dollar with Colombia on it, which has heretofore purchased things, they will not be affected by the declaration of legal tender.

Mr. ARIAS. But, for instance: I pay my employees in Colombia silver; then my man goes to the retailer and buys his goods; but the retailer will have to pay to the big merchants, and that is not good for them to exchange.

Secretary TAFT. You mean the retailer will not take the money?

Mr. ARIAS. Yes.

Secretary TAFT. But he will take it—for the purpose of purchasing with the cheap money.

Mr. ARIAS. We rely more on the condition of silver itself to keep its parity than upon the powers we give to the Government. Here is a country where we never have a scarcity of silver, and never an abundance.

Secretary TAFT. The question of maintaining parity depends something on your security. You ought to have a good strong reserve, merely to demonstrate your good faith. We keep in our Treasury $150,000,000 gold, but we never have to touch it. That is not because of our making a paper declaration, but by setting aside the fund. It is to give assurance to the world that we have enough, and more than enough. Our Philippine gold reserve is about $7,000,000, with an 18,000,000-peso issue. It must be admitted that the use by the United States of a large fund, in which it recognizes and enforces and stands back of your currency, will itself help you.

Mr. ARIAS. What objections have you to the soundness of the silver currency of ours?

Secretary TAFT. The only objection is the absence of any other except a general pledge of the Government to maintain the parity.

Mr. ARIAS. We give the Government full power. In two years from now, when the legislature convenes, we shall have the experience to tell just what conditions are needed.

Secretary TAFT. Here is the United States Government. Its word is usually regarded as good, but in order to back that up with security it takes $150,000,000 of gold; so with the Philippine Government, which has authority to borrow $10,000,000 in order to maintain the parity, nevertheless it has thought it wise to buy silver, and we have in our Treasury $7,000,000 to maintain the parity of $18,000,000 pesos.

Mr. CONANT. It is made a trust fund, specifically applied.

Judge MAGOON. About this question of maintaining the parity; as I understand it you are relying, first, upon the limitation of the coinage of silver, and, second, upon the ability of the Government to maintain it. Now, the limitation in the proposed law is only as to the Colombian silver in circulation in Panama. Would it not be better to fix a certain amount rather than a variable amount? It would be difficult to prevent the bringing in of Colombian silver into Panama if it were a profitable industry. You are relying on a limitation, but have not specifically limited the amount of silver which your Government may coin.

Mr. ARIAS. If you should find when we collect the silver that it is too much, we have power to contract the currency. If we find that difference, then instead of returning our dollar for the Colombian silver we would throw up the difference.

Secretary TAFT. That bill in many respects is admirable. It is just exactly what we want, because we want to have a currency there that will assist us and we want to have a currency to assist you. If you could place the actual limit on the amount of silver you will coin, and then leave to us to say to you when additional coinage is needed to meet the demands of Admiral Walker, representing the canal, that would be well. Suppose he would need double the amount. Say that at the instance of the United States Government you would issue an additional sum of $3,000,000, with the provision that you should use to secure the parity thereof, say, 20 to 25 per cent by depositing it at interest with an accepted trust company in New York for the benefit of your Government. You will observe that it is to our interest that we should use that coin to maintain the parity, and if we agree, as we must agree, in the estimates in our dealings to make that good by announcing it as worth so much and paying our laborers in that way, we enable you to secure the parity, and you aid us by depositing 20 to 25 per cent, not for the first three million but for any additional to be issued for the benefit of Admiral Walker.

BRIEF OF A CONFERENCE HELD IN THE OFFICE OF THE SECRETARY OF WAR ON THE AFTERNOON OF JUNE 18, 1904, BETWEEN THE SECRETARY OF WAR AND A DELEGATION FROM THE REPUBLIC OF PANAMA.

After a general discussion of the three paragraphs constituting the proposed agreement between the United States and the Republic of Panama for a monetary system, Mr. Cromwell stated:

Mr. CROMWELL. The essential points, Mr. Secretary, are a gold standard with the United States gold coins circulating now. Next, that we will issue a limited money for the first conversion up to 3,000,000 half-dollar pesos, and that on January 1, 1906, we will issue additional coinage as you may call for it, up to the limit of 3,000,000 half-dollar pesos more; that we will secure a guaranty of the parity, first, by a deposit of 15 per cent at each time from the beginning to the end of the series; and, second, that the Commission shall open its reserve funds to the amount necessary to insure this parity. That is the essence of our proposal. Now we put that in writing. If you accept it, Mr. Secretary, we are going to cable it to Panama to-night, and the convention is in session and is waiting solely for this, and they are anxious to get home. The cables are asking us almost every hour to get this conclusion, and we want them to receive your response. They will hold a session Monday morning, and they probably will pass the law in the form that is reported to-night.

* * * * * * *

After a general discussion of proposed amendments, Secretary Taft read the draft of the agreement, with amendments, as follows:

First. That the issue of silver coin of the Republic in exchange for Colombian silver coin in circulation in the Republic within a period to be fixed by the latter, shall be limited in the aggregate to the conversion of three million pesos, Colombian silver coins.

Second. That after the first day of July, 1905 (changed from the first day of January, 1906), there shall be coined and issued by the Republic such additional amount of silver coin, to the limit in the aggregate to the value of 1,500,000 pesos—equivalent to three million half-dollar pesos—as may be deemed by the President of the United States necessary or advisable in the construction or operation of the Isthmian Canal, and as may be requested by him of the executive power of the Republic.

Third. To guarantee the parity of such silver coin with the gold coin the Republic shall create a reserve fund by the deposit with a responsible banking institution in the United States of a sum equal in gold to fifteen per cent of the amount of the silver coin by it issued and as the same is issued, together with an amount equal to the seigniorage on the silver coins issued under the preceding provision 2. Arrangements shall be made between the Government of Panama and the Isthmian Canal Commission for selling at reasonable rates and on such terms as will tend to maintain the parity of the silver coins of Panama, drafts upon the reserve fund set aside under the previous paragraph, and upon the funds of the Isthmian Canal Commission.

The coin of the Republic shall be legal tender in the Canal Zone. The United States shall employ such silver coins in its disbursements in the Canal Zone and in the Republic so far as the United States may find it practicable and convenient.

The silver coinage herein referred to shall be executed by the Government of Panama at the mints of the United States, at the usual and legal rates.

Nothing in the convention shall be construed to restrict the rights of the Republic to reduce its silver currency after the opening of the Isthmian Canal to commerce, to such amount as it may deem advisable, and thereupon reduce and withdraw pro rata the reserve fund corresponding to such reduction of the silver coinage issue.

Mr. CROMWELL. There should be some memorandum embodying this and an exchange between the two Governments.

Secretary TAFT. The only authority I have is to act for the Commission. The authority which the Secretary of State would have is an authority which necessarily involves the treaty-making power and goes to the Senate. Now, we do not want to do that. The Post-Office Department makes a lot of arrangements which never go to the Senate at all, and this, I think, might properly be made by me as Secretary of War, representing the Isthmian Canal Commission with your Government. They have the disbursement of $150,000,000 for this very purpose, and I do not see why it is not sufficient security for you, if you adopt that law, to say that we will subscribe to its terms.

Mr. CROMWELL. I think there is another view. Under the Spooner law all authority is vested in the Government. The President thereafter delegates, so to speak, some of his powers to yourself as Secretary of War, and charges you with certain broad duties in a letter of instructions, and I consider that you really act as the representative of the President under his letter of instructions given to you, and which he in turn derives from the Spooner law.

Secretary TAFT. Well, if you are satisfied, I will simply say—directed to these gentlemen—that if this is enacted into law by the Republic of Panama, in behalf of the Panama Canal, and exercising the authority imposed upon me by the President, I will, in behalf of the Canal Commission, see that the terms binding upon me shall be carried out. What do you say to that, Admiral?

Admiral WALKER. Yes, sir.

Secretary TAFT. Suppose, now, I just address a letter to these gentlemen, or to the minister—I don't care which—saying that after a conference and an examination of the terms which we have agreed upon, and representing the Canal Commission by virtue of the power imposed upon me by the Pesident of the United States, I consent and agree on behalf of the Isthmian Canal Commission and the Government, so far as I have the power, that the terms therein imposed upon the Canal Commission in the United States and the Government of the United States shall be complied with upon the enactment of the law by the Republic of Panama.

Mr. CROMWELL. That is correct, Mr. Secretary, although we may perhaps want to put it in a little more precise form.

(At the suggestion of Mr. Cromwell, the members of the conference party signed their initials on the margin of the proposed agreement opposite the several amendments inserted. Mr. Cromwell then stated that the party would call Monday morning and give the Secretary of War a clean copy of the agreement.)

APPENDIX E.

AGREEMENT BETWEEN THE SECRETARY OF WAR, ACTING FOR THE CANAL COMMISSION, AND THE COMMISSION OF PANAMA.

JUNE 20, 1904.

Messrs. RICARDO ARIAS AND EUSEBIO A. MORALES,
Special Fiscal Commissioners of the Republic of Panama.

GENTLEMEN: I understand that there is now pending in the Convention of the Republic of Panama, exercising legislative power for the Republic, a bill to establish a monetary standard and to provide for the coinage necessary in the Republic. The Isthmian Canal Commission, whose action, by direction of the President of the United States, I am authorized to supervise and direct, is vitally interested in the maintenance in the Canal Zone of a stable currency, based upon the gold standard.

I conceive it to be of common benefit to the Republic and to the Isthmian Canal Commission that the currency used in the Republic and in the Canal Zone should be the same. I am informed that the Convention of the Republic has under consideration a measure which in substance provides:

I. That the monetary unit of the Republic shall be a gold peso of the weight of 1 gram, 672 milligrams, and of nine hundred one-thousandths fineness, divisible into 100 cents, to be issued as and when considered by the Republic necessary or convenient for its requirements.

II. That the present gold dollar of the United States of America and its multiples shall also be legal tender in the Republic of Panama for its nominal value as equivalent to one gold peso of the Republic.

III. That fractional silver coins shall be issued by the Republic, of various denominations, all to be of an alloy composed of nine hundred one-thousandths of pure silver and one hundred one-thousandths of copper, the declared value of the same bearing a ratio to the same weight of gold of approximately one to thirty-two, and that such fractional silver currency shall be legal tender in all transactions.

IV. That the silver to be coined shall be in fractional denominations of the gold peso or dollar and, except as hereinafter specifically provided, shall be coined only in exchange or conversion of the Colombian silver peso and fractional currency now legally in circulation in the Republic, and that the amount thus converted shall not exceed $3,000,000 of such Colombian silver pesos.

V. That after July 1, 1905, there shall be coined and issued by the Republic such additional amount of fractional silver currency to the limit in the aggregate in value of 1,500,000 pesos or gold dollars, equivalent to 3,000,000 half-dollar pieces, as may be deemed by the Secretary of War of the United States necessary or advisable in the construction of the Isthmian Canal and as may be requested by him of the executive power of the Republic.

VI. The Republic of Panama, in order to secure the legal parity and equivalence with the gold standard of such fractional silver coins, shall create a reserve fund by deposit with a responsible banking institution in the United States of a sum in lawful currency of the United States equivalent to 15 per cent of the nominal value of the silver fractional currency issued by the Republic, and as the same is issued, together with an amount equal to the seigniorage on the silver coins issued at the request of the Secretary of War as aforesaid, less all necessary costs of coinage and transportation.

VII. That after conference with the Isthmian Canal Commission or its representatives or fiscal agents, the Republic of Panama will take such steps with respect to exchange by drafts upon its reserve fund as will tend to prevent the disturbance of the legal parity of the silver fractional currency of the Republic of Panama with the gold standard.

VIII. That the Republic of Panama shall cause its coinage to be executed at the mints of the United States.

Assuming that legislation will be enacted substantially to the foregoing effect, I agree on behalf of the Isthmian Canal Commission and by direction of the President of the United States—

First. That the Isthmian Canal Commission will make the gold and silver coin of the Republic of Panama legal tender within the Canal Zone by appropriate legislation.

Second. That it will employ such gold and silver coin of the Republic in its disbursements in the Canal Zone and in the Republic as the Canal Commission shall find practicable and convenient.

Third. The Isthmian Canal Commission shall cooperate with the Republic of Panama to maintain the parity of the fractional silver coinage of the Republic of Panama with the gold standard by sale of drafts upon its funds at reasonable rates and on terms which will tend to prevent the disturbance of such parity.

Fourth. It is mutually agreed that nothing herein contained shall be construed to restrict the right of the Republic to reduce its silver currency after the opening of the canal to commerce to such an amount as it may deem advisable, and thereupon to reduce and withdraw, pro rata, the reserve fund corresponding to the reduction of the amount of silver coinage outstanding.

Will you please confirm your accord with the foregoing?

Very respectfully,

WM. H. TAFT, *Secretary of War.*

APPENDIX F.

SPECIAL FISCAL COMMISSION OF THE REPUBLIC OF PANAMA,
New York, June 20, 1904.

Hon. WM. H. TAFT,
Secretary of War, Washington, D. C.

SIR: Pursuant to the powers conferred upon us by the general directions of the Government of the Republic of Panama, and subject to the enactment by the Republic of the necessary legislation, we hereby declare our complete accord with the convention embodied in your communication of this date, and agree to the same as therein set forth.

We are, dear sir, very truly, yours, RICARDO ARIAS,
EUSOBIO A. MORALES,
Special Fiscal Commissioners of the Republic of Panama.

APPENDIX G.

DEPARTMENT OF STATE,
Washington, July 25, 1904.

The SECRETARY OF WAR.

SIR: I have the honor to inclose herewith a translation of the new Panaman currency law, No. 84, June 28, 1904, forwarded hither by the legation at Panama.

I have the honor to be, sir, your obedient servant,

ALVEY A. ADEE,
Acting Secretary.

WAR DEPARTMENT,
Washington, July 26, 1904.

SIR: I have the honor to acknowledge the receipt of your letter of the 25th instant, transmitting a translation of the new Panaman currency law, No. 84, June 28, 1904.

Very respectfully, ROBERT SHAW OLIVER,
Acting Secretary of War.

Hon. ALVEY A. ADEE,
Acting Secretary of State.

[Law No. 84.]

JUNE 28, 1904.

CURRENCY AND COINAGE.

The national convention of Panama decrees:

ARTICLE I.

The monetary unit of the Republic shall be the balboa, or a gold coin of one gramme six hundred and seventy-two milligrammes (1.672) weight and nine hundred thousandths (0.900) fineness—divisible into 100 cents (100/100).

The actual gold dollar of the United States of America and its multiples shall be legal tender in the Republic for its nominal value, equivalent to the balboa.

ARTICLE II.

When the Executive power arranges the national gold coinage this coinage shall be minted in pieces of one, two and a half, five, ten, and twenty balboas, choosing those coins which will have the greatest circulation.

ARTICLE III.

The silver money shall consist of an alloy of nine hundred thousandths of pure silver and one hundred thousandths of copper.

ARTICLE IV.

The names, weight, and diameters of the silver coins shall be as follows:

The peso, weight 25 grammes, diameter 37 millimetres, value 50 cents ($\frac{50}{100}$) of the Balboa;

The half peso, weight 12½ grammes, diameter 30 millimetres, value 25 cents;

The fifth of a peso, weight 5 grammes, diameter 24 millimetres, value 10 cents;

The tenth of a peso, weight 2½ grammes, diameter 18 millimetres, value 5 cents;

The twentieth of a peso, weight 1¼ grammes, diameter 10 millimetres, value 2½ cents.

In consequence two pesos of silver will equal in value one Balboa, which is the monetary unit. The other fractions of a peso shall retain the same proportional fractional equivalent with respect to the Balboa as a unit.

ARTICLE V.

The national silver coinage shall be legal tender for its nominal value in all transactions.

ARTICLE VI.

The Colombian silver money not inferior to 835-thousandths fine and 666-thousandths of the same alloy, which is actually in circulation in the Republic, shall be exchanged for the new national currency at the rate of 212.50 for each 100 Balboas or their equivalent in Panama silver money. But the conversion of the Colombian silver of 666-thousandths shall alone be limited to the five-cent pieces and to the sum of 20.000 pesos, as stipulated in the first clause of Contract No. 36, entered into between the extinct department of Panama in the name of the Republic of Colombia and Messrs. Isaac Brandon and Brothers, of this city, for the coinage of Colombian silver money, which contract was approved by General Victor Manuel Salazar, civil and military chief of the department of Panama, dated October 10, 1902, and published in No. 1399 of the Panama Gazette of October 9th of the same year.

The obligations contracted before the present law became effective, payable tacitly or expressly in Colombian silver not inferior to 835 thousandths, shall be redeemable in the new national money at the rate indicated in this article.

ARTICLE VII.

The Colombian silver money referred to in this law shall continue to be legal tender until the day upon which begins the verification of the exchange.

The Executive power shall initiate the conversion of moneys, as referred to in article 6, on the first day of September next. For this purpose there shall be designated the public offices, where, in the capital and the provinces of the Republic, the verification of the exchange shall take place and due notification shall be published thirty days before the date of exchange.

This conversion shall be made within sixty days after September 1st next. After which date Colombian money shall cease to be legal tender in the Republic.

ARTICLE VIII.

For the purpose of exchanging the silver money actually in circulation in the Republic, the Executive power is authorized to coin and issue, as stated in this law, Panaman money to the amount of 3,000,000 pesos.

ARTICLE IX.

To guarantee the parity between the silver and the gold money, the Executive power shall deposit in a safe banking institution in the United States a sum in gold equivalent to 15 per cent of the value of coinage issued.

ARTICLE X.

The Executive power shall publish monthly statements in the Official Gazette of the amounts of Colombian silver presented for exchange, and when the conversion is completed the Executive power is authorized to sell the silver thus obtained in any foreign market and at the best rate obtainable. The product of such sale shall be deposited as part of the funds of the Republic.

ARTICLE XI.

The design of the Panaman coins referred to in this law shall be as follows:

On the obverse, the bust of Vasco Nunez de Balboa, discoverer of the Panaman shores on the Pacific, in profile and facing the right with an ornament upon which are engraved the words "God, Law, Liberty." Above the bust at the edge of the coin the phrase "Republica de Panama;" on the base of the bust the word "Balboa" in capital letters but not so large as the other inscriptions. In the lower part of the coin, under the bust, the year of coinage in figures.

The reverse of the coin shall bear the coat of arms of the Republic of Panama in the center; around the upper edge, the value of the coin in letters; around the lower edge, toward the right, the weight of the coin in grammes; toward the left, the amount of alloy in thousandths of fineness.

ARTICLE XII.

It is absolutely prohibited to introduce into the territory of the Republic any other silver money except that which the Executive power may issue in completion of this law.

ARTICLE XIII.

The Executive power is authorized to celebrate with the Government of the United States of America a monetary convention based upon the present law and arranged for at the conference held at Washington on the 18th of the present month of June between the commissioners of that Government and those of the Republic of Panama.

ARTICLE XIV.

The expenses incurred in carrying out this law shall be considered included in the regular budget of expenses.

Given at Panama the 27th day of June, 1904.

The President,

JERARDO ORTEGA.

The secretary,

LADISLAO SOSA.

NATIONAL EXECUTIVE POWER, TREASURY DEPARTMENT, *Panama, June 28, 1904.*

Publish and execute,

H. AMADOR GUERRERO.

The secretary of the treasury,

F. V. DE LA ESPRIELLA.

APPENDIX H.

[Circular No. 4, Isthmian Canal Commission.]

OFFICE OF THE ISTHMIAN CANAL COMMISSION,
Washington, D. C., December 30, 1904.

The following order of the Secretary of War is published for the information and guidance of all concerned:

"PANAMA, *December 3, 1904.*

"By direction of the President, it was ordered that, subject to the action of the 58th Congress as contemplated by the act of Congress approved April 28, 1904—

"SECTION 1. No importation of goods, wares, and merchandise shall be entered at Ancon or Cristobal, the terminal ports of the canal, except such goods, wares, and merchandise as are described in Article XIII of the treaty between the Republic of Panama and the United States, the ratifications of which were exchanged on the 26th day of February, 1904, and except goods, wares, and merchandise in transit across the Isthmus for a destination without the limits of said Isthmus, and except coal and crude mineral oil for fuel purposes to be sold at Ancon or Cristobal to seagoing vessels; said coal and oil to be admitted to those ports free of duties for said purposes:

"*Provided, however*, That this order shall be inoperative, first, unless the Republic of Panama shall reduce the ad valorem duty on imported articles described in class 2 of the act of the national convention of Panama passed July 5, 1904, and taking effect October 12, 1904, from fifteen per centum to ten per centum and shall not increase the rate of duty on the imported articles described in the other schedules of said act, except on all forms of imported wines, liquors, alcohol, and opium, on which the Republic may fix higher rates; second, unless article 38 of the constitution of the Republic of Panama, as modified by article 146 thereof, shall remain in full force and unchanged so far as the importation and sale of all kinds of merchandise are concerned; third, unless the consular fees and charges of the Republic of Panama in respect to entry of all vessels and importations in said ports of Panama and Colon shall be reduced to sixty per cent of the rates now in force; and, fourth, unless goods imported into the ports of Panama and Colon consigned to or destined for any part of the Canal Zone shall not be subjected in the Republic of Panama to any other direct or indirect impost or tax whatever.

"SEC. 2. In view of the proximity of the port of Ancon to the port of Panama and the port of Cristobal to the port of Colon, the proper customs or port official of the Canal Zone shall, when not inconsistent with the interests of the United States, at the instance of the proper authority of the Republic of Panama, permit any vessel entered at or cleared from the ports of Panama and Colon, together with its cargo and passengers, under suitable regulations for the transit of the imported merchandise and passengers to and from the territory of the Republic of Panama, to use and enjoy the dockage and other facilities of the ports of Ancon and Cristobal, respectively, upon payment of proper dockage dues to the owners of said docks:

"*Provided, however*, That reciprocal privileges as to dockage and other facilities at Panama and Colon, together with suitable arrangement for transit of imported merchandise and passengers to and from the territory of the Canal Zone, shall be granted by the authorities of the Republic of Panama, when not inconsistent with its interests, to any vessel, together with its cargo and passengers, entered at or cleared from the ports of Ancon and Cristobal: *Provided, however*, That nothing herein contained shall affect the complete administrative, police, and judicial jurisdiction of the two Governments over their respective ports and harbors, except as hereinafter provided in section 6.

"*Provided also*, That vessels entering or clearing at the port of Panama shall have the absolute right freely to anchor and lade and discharge their cargoes by lighterage from and to Panama at the usual anchorage in the neighborhood of the islands of Perico, Flamenco, Naos, and Culebra, though included in the harbor of Ancon under the provisional delimitation as amended under section 5 hereafter, and to use the said waters of said harbor for all lawful commercial purposes.

"SEC. 3. All manifests and invoices and other documents in respect to vessels or cargoes cleared or consigned for or from the ports of Panama and Colon shall,

as heretofore, be made by the officials of the Republic of Panama. All manifests, invoices, and other documents in respect to the vessels and cargoes cleared or consigned for or from the ports of Ancon or Cristobal shall be made by officials of the United States.

"SEC. 4. No import duties, tolls, or charges of any kind whatsoever shall be imposed by the authorities of the Canal Zone upon goods, wares, and merchandise imported, or upon persons passing from the territory of the Republic of Panama into the Canal Zone, and section 5 of the Executive order of June 24, 1904, providing that duties on importations into the Canal Zone are to be levied in conformity with such duties as Congress has imposed upon foreign merchandise imported into ports of the United States, is hereby revoked; but this order shall be inoperative unless the authorities of the Republic of Panama shall grant by proper order reciprocal free importations of goods, wares, and merchandise and free passage of persons from the territory of the Canal Zone into that of the Republic of Panama.

"SEC. 5. The provisions of this order also shall not be operative except upon the condition that the delimitation of the cities and harbors of Colon and Panama, signed on the 15th day of June, 1904, by the proper representatives of the governments of the Republic of Panama and of the Canal Zone, shall be provisionally enforced, and while the same shall remain in force with the consent of both parties thereto the provisional delimitation shall include not only the terms set forth in the writing thereof, but also the following, viz: That the harbor of Panama shall include the maritime waters in front of said city to the south and east thereof, extending three marine miles from mean low-water mark, except the maritime waters lying westerly of a line drawn from a stake or post set on Punta Mala through the middle island of the three islands known as *Las Tres Hermanas*, and extending three marine miles from mean low-water mark on Punta Mala, which waters shall be considered in the harbor of Ancon.

"SEC. 6. This order also shall be inoperative unless the proper governmental authorities of the Republic of Panama shall grant power to the authorities of the Canal Zone to exercise immediate and complete jurisdiction in matters of sanitation and quarantine in the maritime waters of the ports of Panama and Colon.

"SEC. 7. The Executive order of June 24, 1904, concerning the establishment of post-offices and postal service in the Canal Zone is modified and supplemented by the following provisions:

"All mail matter carried in the territory of the Canal Zone to or through the Republic of Panama to the United States and to foreign countries shall bear the stamps of the Republic of Panama, properly crossed by a printed mark of the Canal Zone government, and at rates the same as those imposed by the Government of the United States upon its domestic and foreign mail matter, exactly as if the United States and the Republic of Panama for this purpose were common territory. The authorities of the Canal Zone shall purchase from the Republic of Panama such stamps as the authorities of the Canal Zone desire to use in the Canal Zone, at forty per centum of their face value; but this order shall be inoperative unless the proper authorities of the Republic of Panama shall, by suitable arrangements with the postal authorities of the United States, provide for the transportation of mail matter between post-offices on the Isthmus of Panama and post-offices in the United States at the same rates as are now charged for domestic postage in the United States, except all mail matter lawfully franked and inclosed in the so-called penalty envelopes of the United States Government, concerning the public business of the United States, which shall be carried free, both by the governments of Panama and of the Canal Zone: *Provided, however*, That the Zone authorities may, for the purpose of facilitating the transportation of through mail, between the Zone and the United States in either direction, inclose such through mail properly stamped or lawfully franked, in sealed mail pouches, which shall not be opened by the authorities of the Republic of Panama in transit, on condition that the cost of transportation of such mail pouches shall be paid by the Zone government.

"SEC. 8. This order also shall not be operative unless the currency agreement made at Washington June 20, 1904, by the representatives of the Republic of Panama and the Secretary of War of the United States, acting with the approval of the President of the United States, for the establishment of a gold standard of value in the Republic of Panama and proper coinage, shall be approved and put into execution by the President of the Republic of Panama, pursuant to the authority conferred upon him by law of the Republic of

Panama, No. 84, approved June 20, 1904, and unless the President of the Republic of Panama, in order that the operation of the said currency agreement in securing and maintaining a gold standard of value in the Republic of Panama may not be obstructed thereby, shall, by virtue of his authority conferred by law No. 65, enacted by the National Assembly of Panama on June 6, 1904, abolish the tax of one per cent on gold coin exported from the Republic of Panama.

"SEC. 9. Citizens of the Republic of Panama at any time residing in the Canal Zone shall have, so far as concerns the United States, entire freedom of voting at elections held in the Republic of Panama and its provinces or municipalities at such places outside of the Canal Zone as may be fixed by the Republic and under such conditions as the Republic may determine; but nothing herein is to be construed as intending to limit the power of the Republic to exclude or restrict the right of such citizens to vote as it may be deemed judicious.

"SEC. 10. The highway extending from the eastern limits of the city of Panama, as fixed in the above-mentioned provisional delimitation agreement of June 10, 1904, to the point still farther to the eastward where the road to the 'Savannas' crosses the Zone line (which is 5 miles to eastward of the center axis of the canal) shall be repaired and maintained in a serviceable condition at the cost and expense of the authorities of the Canal Zone, and also in like manner the said road from the said eastern limits of the city of Panama to the railroad bridge in the city of Panama shall be repaired at the cost of the authorities of the Canal Zone; but this order shall not be operative unless the Republic of Panama shall waive its claim for compensation for the use in perpetuity of the municipal buildings located in the Canal Zone.

"SEC. 11. The United States will construct, maintain, and conduct a hospital or hospitals either in the Canal Zone or in the territory of the Republic, at its option, for the treatment of persons insane or afflicted with the disease of leprosy, and indigent sick, and the United States will accept for treatment therein such persons of said classes as the Republic may request; but this order shall not be operative unless, first, the Republic of Panama shall furnish without cost the requisite lands for said purposes if the United States shall locate such hospital or hospitals in the territory of the Republic, and, second, unless the Republic shall contribute and pay to the United States a reasonable daily per capita charge in respect of each patient entering, upon the request of the Republic, to be fixed by the Secretary of War of the United States.

"SEC. 12. The operation of this Executive order and its enforcement by officials of the United States on the one hand, or a compliance with and performance of the conditions of its operation by the Republic of Panama and its officials on the other, shall not be taken as a delimitation, definition, restriction, or restrictive construction of the rights of either party under the treaty between the United States and the Republic of Panama.

"This order is to take effect on the 12th day of December, 1904.

"WM. H. TAFT,
"Secretary of War."

This order will be duly published and enforced.

J. G. WALKER,
Chairman Isthmian Canal Commission.

[Circular No. 5. Isthmian Canal Commission.]

WASHINGTON, D. C., *December 30, 1904.*

The following order of the Secretary of War is published for the information and guidance of all concerned:

PANAMA, *December 6, 1904.*

"[Executive order of December 6, 1904, explanatory of Executive order of December 3, 1904.]

"SECTION 1. Consignments of goods, wares, and merchandise which by virtue of section one of the above-mentioned order of December 3, 1904, can not be entered for importation at the ports of Ancon or Cristobal may nevertheless, at the option of the consignor, if accompanied by the proper consular invoices of the consul of the Republic of Panama at the port of consignment, be landed at Ancon or Cristobal, respectively, in transit to any part of the Canal Zone or the Republic, upon payment of the proper duties to the Republic of Panama, under suitable arrangements similar to those provided for by section 2 of said order of December 3, 1904.

"But such goods, wares, and merchandise not accompanied by consular invoice of the consul of the Republic shall not be permitted to land at Ancon or Cristobal.

"SEC. 2. The order of December 3, 1904, shall be construed to permit free exportation and consignment of goods, wares, and merchandise and free transit of persons and vehicles from the Republic through the Canal Zone and from the terminal ports thereof.

"By direction of the President:

"WM. H. TAFT,
"*Secretary of War.*"

This order will be duly published and enforced.

J. G. WALKER,
Chairman Isthmian Canal Commission.

APPENDIX I.

[Memorandum for Mr. Pepperman.]

ISTHMIAN CANAL AFFAIRS, OFFICE OF ADMINISTRATION,
Washington, D. C., December 22, 1905.

Responding to your verbal request that comparison be made of the rates of exchange between United States currency and Colombian silver on the one hand and between United States currency and Panamanian silver on the other, I have to state that the vouchers in the accounts of disbursing officers on the Isthmus show the following:

On May 13, 1904, $15,000 United States currency was given for an equivalent value in Colombian silver, for which we received 2.17½ pesos for each $1 United States currency. Other transactions were as follows:

Date of sale.	Amount sold, United States currency.	Rate of exchange.
May 23, 1904	$15,000	.217½
June 13, 1904	15,000	.214½
July 5, 1904	20,000	.210½
July 30, 1904	30,000	.210½
August 11, 1904	50,000	.210½
September 17, 1904	50,000	.206½
October 10, 1904	40,000	.213-15/16
October 27, 1904	40,000	.213-15/16
November 11, 1904	40,000	.214½
November 28, 1904	65,000	.214½
December 23, 1904	80,000	.214½

The new Panamanian currency was put into circulation on February 12, 1905, and no transactions in Colombian silver were conducted after that time, the disbursing officer closing out all on hand and converting it into United States currency and later into Panamanian silver.

Under the agreement entered into April 29, 1905, the Commission is enabled to purchase Panamanian silver at the uniform rate of 2 pesos for each $1 of United States currency. There is no premium paid nor discount received in this class of transactions.

It is found that we also are purchasing United States currency under section C of the agreement with the bankers, whereby they agreed to sell to the Commission at the uniform rate of three-fourths of 1 per cent United States currency, on the amount called for, in addition to the face amount thereof, such amounts of United States currency as shall be called for. Under this arrangement we have paid, on June 28, 1905, $225 premium on $30,000, on June 29, 1905, $450 premium on $60,000, and also on the latter date $375 premium on $50,000, United States currency.

A voucher paid on March 1, 1905, shows that the ratio between Colombian silver and United States currency was 2.125.

Respectfully,

HARRY C. LEWIS,
Acting General Auditor.

APPENDIX K.

Memorandum of agreement made this 29th day of April, in the year one thousand nine hundred and five, by and between:

I. The United States Isthmian Canal Commission, hereinafter called the "Commission," and the Panama Railroad Company, hereinafter called the "Railroad Company;"

II. The Republic of Panama, acting through William Nelson Cromwell, its fiscal commissioner in the United States, hereinafter called the "Republic;" and

III. Messrs. Ehrman & Co., a copartnership; Messrs. Isaac Brandon & Brothers, a copartnership; the International Banking Corporation, a corporation organized under the laws of Connecticut, and the American Trade Developing Company, a corporation organized under the laws of New Jersey; each of said firms and corporations being engaged, among other things, in the business of banking on the Isthmus of Panama and elsewhere and hereinafter called the "Bankers," witnesseth:

Whereas it is the desire of the Commission, the Railroad Company, and the Republic to secure a reliable supply of silver of the Panama currency as required for their respective wants upon the Isthmus of Panama, and also to maintain, substantially, the parity of the silver coinage of the Republic with the gold standard of the latter, as designed by the agreement entered into between the Secretary of War for the Isthmian Canal Commission and the Republic of Panama at Washington, on June 20, 1904, and confirmed and promulgated by them at Panama on December 3, 1904; and

Whereas to the end aforesaid, it is mutually desired by the parties hereto that this agreement be entered into between them:

Now, therefore, in consideration of the premises and of the mutual agreements herein contained, the parties hereto severally, but not jointly, agree to and with each other as follows:

FIRST.

A. The bankers severally agree with the Commission, the Railroad Company, the Republic, and with each other, to purchase and take in the proportion following, namely: Ehrman & Co., thirty (30) per centum; Isaac Brandon & Brothers, thirty (30) per centum; The International Banking Corporation, twenty-five (25) per centum, and The American Trade Developing Company, fifteen per centum from the Commission, the Railroad Company, and the Republic, all drafts or bills of exchange on New York which may be drawn by the Commission, the Railroad Company, or the Republic by the duly authorized officer or representative of either, and made payable at New York at sight in United States currency, at the uniform rate of two silver pesos Panama currency, for each one dollar of United States currency, which either of said last three named parties may offer for sale to, and request to be purchased by, the bankers, and to pay for the same in silver coin of Panama currency: *Provided*, That ten days written notice, specifying the amount of such drafts or bills of exchange so offered shall, in each instance, be previously given to the bankers by the party so requesting the same.

B. The Bankers also likewise severally agree to sell and deliver to the Commission, the Railroad Company and to the Republic in the proportions aforesaid, all drafts or bills of exchange on New York to be drawn by them, respectively, and to be payable at one day's sight in United States currency, at the uniform rate of two silver pesos and one cent Panama currency for each one dollar of United States currency which either of said last three named parties may request to be to them so sold upon payment for the same in silver currency of Panama; *Provided*, That ten days written notice, specifying the amount of such drafts or bills of exchange, shall, in each instance, be previously given to the Bankers by the parties so requesting the same.

C. The Bankers also severally agree to sell and deliver to the Commission, and the Railway Company, and the Republic, respectively, upon fifteen days' written notice in each instance previously given to the Bankers, and in the proportions aforesaid, such amount of United States currency as either or all of said named parties may so specify at the uniform rate of three-quarters of one per centum United States currency upon the amount so called for in addition to the face amount thereof.

D. The Bankers also severally agree to sell to the public—that is, to whomsoever may call for and request the same at their respective banking offices in

Panama, and who may at the same time tender therefor payment in silver currency of Panama—draft or bills of exchange on New York drawn by them, respectively, at not more than three days' sight, at a rate which shall not exceed two silver pesos and three cents Panama currency for each one dollar United States currency; and they also likewise agree not to sell any drafts or bills of exchange on New York to any other parties at rates or upon terms or compensation which shall in any instance exceed two silver pesos and three cents Panama currency for each one dollar United States currency.

The provisions of this article shall be subject to the provisions of article third hereof.

SECOND.

The Commission, the Railroad Company, and the Republic, severally, but not jointly, agree with each other and with the Bankers severally to purchase from or sell to the Bankers, as the case may be, in the proportions aforesaid, all drafts or bills of exchange drawn on the Isthmus upon any party in the United States which they may desire to purchase or sell for any purpose soever, upon the terms and conditions herein agreed.

The provisions of this article shall be subject to the provisions of article third hereof.

THIRD.

A. Any of the Bankers who shall so desire may be relieved or released in whole or in part from his obligations hereinbefore expressed with respect to any particular requisition of the Commission, the Railroad Company, or the Republic made under and in pursuance of the terms of this contract, upon given notice to all the parties hereto, as follows: Such notice must be in writing and must specify the part or amount of such requisition from which such banker desires to be relieved or released. Such notice must be given to all the other parties to this agreement before three o'clock of the day next after that upon which the Bankers shall be notified of such requisition (Sundays and legal holidays excepted), and unless so given within the time so limited, shall be null, void, and of no effect. But such notice need not be given by any banker to any other banker who shall have already served notice himself under the provisions of this paragraph. Upon giving due and timely notice, as aforesaid, the Banker giving such notice shall be relieved and released from his obligations hereunder with respect to such requisition to the extent specified in such notice, and none of the other Bankers shall be under any obligations whatsoever to such banker in respect of the requisition as to which such notice shall have been given.

B. If any of the Bankers shall have become released and relieved in whole or in part from his obligations with respect to any such requisition by giving due and timely notice, as hereinbefore provided, or if any of the Bankers who have not given such notice shall fail fully to comply with all their obligations with respect to any such requisition under the preceding articles of this agreement, or if any of the Bankers who have given such notice shall fail fully to comply with their obligations as to the portion of their liability from which they have not thereby been so relieved or released, or if this agreement shall be terminated as to any of said Bankers, as hereinafter in paragraph "C" of this article provided, the Banker or Bankers who shall not have given notice under paragraph "A" of this article, or as to whom this agreement shall not have been terminated, hereby severally agree with each other and with the Commission, the Railroad Company, and the Republic that they will take upon themselves and perform the obligations of the Banker or Bankers so relieved and released or so failing or as to whom this agreement shall be so terminated in the proportion which their several percentages hereinbefore stated shall bear to the aggregate of the percentages of all such remaining Bankers.

C. If any requisition hereunder of the Commission, the Railroad Company, or the Republic shall not be duly and punctually honored and fulfilled by the Bankers or some of them, as hereinbefore provided, then, at the option of either the Commission, the Railroad Company, or the Republic, this agreement shall in all respects cease, determine, and be utterly at an end, notwithstanding the Bankers or some of them may have given notice as provided by paragraph "A" of this article.

If any of the bankers shall, in any respect, fail to observe and perform all and each of the provisions of this agreement, then, at the option of any of the other bankers, this agreement shall cease, determine, and be utterly at an end with

respect to the banker or bankers so in default, and the banker or bankers so in default shall have no further interest hereunder, nor shall the other parties hereto, nor any of them, be under any further obligation hereunder to such banker or bankers: *Provided*, That in that event all the provisions of this agreement shall continue as to, and shall apply to, the remaining banker or bankers as if they alone had originally been the only bankers named herein, and the several shares of percentages of such remaining banker or bankers shall be increased as provided in paragraph "B" hereof. But the giving of notice under paragraph "A" of this article shall not, for the purpose of this paragraph "C," be deemed to be a default on the part of the banker or bankers giving such notice.

FOURTH.

It is mutually agreed that all payments and deliveries of drafts, bills of exchange, or currency, and all communications of any kind, by any party hereto, shall be made as to the Commission, and the Railroad Company, at the offices of their respective disbursing agents in the city of Panama; and as to the Republic at the office of the Tesorería General in the city of Panama; and that all notices, tenders, demands, and communications by any party hereunder shall, as to the bankers, be made at respective offices of the latter in the city of Panama.

FIFTH.

It is mutually agreed that this agreement shall continue for the period of one year from the date hereof, except as sooner terminated in respect of a defaulting party, as provided in Article Third hereof.

In witness whereof the parties hereto have hereunto set their hands and seals, or caused these presents to be duly executed by their authorized representatives, the day and year first herein written.

For Ehrman & Co.:

J. EHRMAN.

For American Trade Developing Co.:

J. EHRMAN.
ISAAC BRANDON & BROS.
INTERNATIONAL BANKING CORPORATION.
[SEAL.] J. S. FEARON, *Vice-President.*

Attest:

JAMES H. ROGERS, *Secretary.*

UNITED STATES ISTHMIAN CANAL COMMISSION,
By T. P. SHONTS, *Chairman.*
PANAMA RAILROAD COMPANY.
By T. P. SHONTS, *President.*
E. A. DRAKE, *Secretary.*
REPUBLIC OF PANAMA.
[SEAL.] By WM. NELSON CROMWELL, *Fiscal Commission.*

Approved:

WM. H. TAFT, *Secretary of War.*

PRESIDENCIA DE LA REPUBLICA,
Panamá, Mayo 29 de 1905.

Aprobado:

M. AMADOR GUERRERO. [SEAL.]

El Subsecretario de Hacienda, encaujado del Despacho,

[SEAL.] T. MARTIN FEUILLET.

This agreement, made and entered into this 3rd day of May, 1905, by and between the Republic of Panama, acting by and through William Nelson Cromwell, fiscal commissioner of the Republic of Panama in the United States, thereunto duly authorized, party of the first part, and Bankers Trust Company, of the city of New York, party of the second part, witnesseth that:

Whereas, by Law No. 84 of 1904, the national convention of the Republic of Panama did establish a monetary system for the Republic and did direct that

three million pesos in silver coinage of the Republic be coined forthwith, all of which has already been issued; and

Whereas by said law it is further provided that to guarantee the parity of the said silver coinage of the Republic with that of gold the Executive power shall deposit with a responsible banking institution in the United States a sum in gold equal to fifteen per centum of the issue of such silver coinage; and

Whereas the Republic of Panama desires to establish said guaranty fund and the President of the Republic has authorized and directed the said fiscal commissioner to establish said fund by making deposit thereof with the party of the second part, under and according to the provisions of this agreement; and

Whereas the party of the second part is desirous of acting as depositary of said guaranty fund upon the terms and conditions hereinafter specified;

Now, therefore, it has been agreed, and is hereby agreed by and between the parties hereto as follows:

ARTICLE FIRST. The Republic of Panama hereby deposits hereunder with the party of the second part the sum of two hundred and twenty-five thousand dollars in lawful currency of the United States, which is fifteen per centum of the silver coinage of the Republic of Panama already issued, and the party of the second part acknowledges receipt of said sum and agrees to hold the same subject to all the terms and conditions of this agreement.

ARTICLE SECOND. So long as said deposit, or any part of the same, continues with the said party of the second part, said party of the second part shall pay to the Republic of Panama interest upon the amount so in its hands at the rate of three per cent. per annum from the date hereof, payable in equal quarterly payments, beginning on the first day of July, 1905.

ARTICLE THIRD. From time to time as the issue of silver coin by the Republic may be increased to the limit in the aggregate of the further sum of three million pesos of such silver coinage, the Republic will increase said fund by the further deposit by the Republic of fifteen per centum in lawful currency of the United States upon all such increase of coinage as issued, so that said fund shall always equal fifteen per centum in lawful currency of the United States of the total amount of silver coin at the time being issued and outstanding.

All the provisions of this contract shall in every respect apply to any such additional sum or sums so deposited hereafter.

ARTICLE FOURTH. Checks or drafts upon said fund shall be made only by the secretario de hacienda of the Republic of Panama or the fiscal commissioner of the Republic of Panama in the United States, with the written approval in each instance of the President of the Republic, and it shall be expressed in such drafts that they are made for the purpose of redeeming silver coin of the Republic of Panama or of transfer to a new depositary, as hereinafter provided. Such statement in such checks or drafts shall be sufficient and conclusive authority and direction, for the purpose of this agreement, for the regularity and lawfulness of such checks or drafts, and the party of the second part shall thereupon pay the same and upon such payment shall be exonerated from all responsibility with respect to all such checks or drafts which it may pay.

ARTICLE FIFTH. The Republic of Panama may at any time change the depositary of said fund, substitute and appoint another depositary thereof, and direct the payment of the fund to such substituted depositary by an instrument in writing signed by the secretario de hacienda of the Republic of Panama or by the fiscal commissioner of the Republic in the United States, and in either case with the written approval of the President of the Republic; and thereupon the said depositary herein named shall forthwith pay over to such substituted depositary the whole principal of the fund then in its hands, together with all accrued interest thereon, and upon making such payment said party of the second part shall be discharged from any further liability hereunder.

And the party of the second part may at any time resign and surrender its relation to said fund by a declaration in writing, signed by it and delivered to the secretario de hacienda of the Republic or the fiscal agent of the Republic in the United States and by paying to either of said officials the whole principal of the fund then in its hands, together with all accrued interest thereon; and upon making such declaration and payment said party of the second part shall be discharged from any further liability hereunder. And the party of the second part also agrees that it shall have no charge for services hereunder, its compensation being comprehended in the use of said deposit.

ARTICLE SIXTH. No creditor of or claimant against the Republic of Panama shall have any right to any part of said fund, nor shall any payments be made therefrom except by draft or by transfer to another depositary as hereinbefore

provided; but the party of the second part shall not be obligated to pay to the party of the first part any sum which it may be required otherwise to pay pursuant to due process of law.

ARTICLE SEVENTH. The party of the second part shall be under no liability in respect of said fund to any person or persons whatsoever except to the Republic of Panama as hereinbefore expressed.

In witness whereof the party of the first part has caused these presents to be signed and sealed by its said fiscal commissioner, and the party of the second part has caused these presents to be signed by its officers thereunto duly authorized and its corporate seal to be hereto affixed the day and year first hereinabove written.

Signed, sealed, and delivered in presence of—
EDWARD BRUCE HILL.

REPUBLIC OF PANAMA,
By W. NELSON CROMWELL,
Fiscal Commissioner.

[SEAL.]

BANKERS TRUST COMPANY,
By J. F. THOMPSON,
Vice-President.

Attest:
BENJ. STRONG, Jr., *Secretary.*

STATE OF NEW YORK, *County of New York, ss:*

On this 2d day of May, 1905, before me personally came William Nelson Cromwell, fiscal commissioner of the Republic of Panama in the United States, to me known and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed same as such fiscal commissioner.

JOHN J. TIERNEY,
Notary Public, Kings County.

Certificate filed in New York County, N. Y.

STATE OF NEW YORK, *County of New York, ss:*

On this 2d day of May, 1905, before me personally came J. F. Thompson, to me known, who, being by me duly sworn, did depose and say: That he resided in Summit, N. J.; that he was the vice-president of the Bankers' Trust Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the board of directors of the said corporation, and that he signed his name thereto by like order.

HARRY W. DONOVAN,
Notary Public No. 52, New York County.

COMMITTEE ON FINANCE, UNITED STATES SENATE,
Saturday, January 27, 1906.

The committee met at 10.30 o'clock a. m.

Present: Senators Aldrich (chairman), Allison, Platt, Spooner, Hale, Daniel, Teller, Money, and Bailey.

Hon. William H. Taft, Secretary of War, appeared before the committee.

The CHAIRMAN. Mr. Bailey, as this is your resolution, suppose you ask the Secretary any questions that you have in your mind with reference to this matter.

STATEMENT OF HON. WILLIAM H. TAFT, SECRETARY OF WAR—Continued.

Mr. BAILEY. Mr. Chairman, the only matter that seemed to me particularly important the Secretary has very frankly eliminated by

admitting that he had no power to make the coin of a foreign country a legal tender in the territory of the United States. So far as the bankers' agreement is concerned, I do not regard that as vitally important. I suppose that any Department having money to expend in a given place would undoubtedly have the right to agree with bankers or others to supply it under any reasonable agreement not involving an unconstitutional exercise of power. Whether in this case the Secretary made a good trade I do not suppose the committee cares to inquire. It is a question mainly of dollars and cents, and I would not have introduced the resolution for any such reason.

I must express my great satisfaction with the frank statement of the Secretary; and, leaving that to stand as it is, I only want to ask the Secretary about one or two matters which appear in the "notes of the conference," which are published in the appendix. I find that at the conclusion of the conference between the Secretary and the representatives of the Republic of Panama, who were assisted by Mr. Cromwell in making this agreement, the fiscal commissioner, as Mr. Cromwell describes himself, suggests that they exchange these agreements, to which the Secretary of War objected, and suggested that an action of that kind would probably take it to the Secretary of State, and through him to the Senate. I want to ask the Secretary if he considers that whether an agreement with a foreign government must come to the Senate or not depends on the Department which negotiates and concludes that agreement?

Secretary TAFT. Not at all, Senator. The expression is just as I used it; but it was not a fortunate one. What I intended to say there was this—or what I intended to answer, was the suggestion that it go to the Secretary of State as if it were a treaty. What I intended to state there, and I think if you will read the whole context it will appear, was that I was acting simply for the Commission under a general authority contained in the statutes and the treaty (the treaty having been consented to by the Senate and the statutes having been passed by both Houses); and that I considered that there was authority conferred upon executive agents to make arrangements of this sort, not agreements which bound the Government, but agreements necessary for the agents to live where they were required to go.

Now, I do not mean to say that those agents might not make agreements which would be the proper subject-matter of treaty, just for instance, as the post-office conventions—and that is what I mentioned there—at a time in the history of this Government were made the subjects of treaty conventions confirmed by the Senate. But subsequently it was found that there were so many to ratify, so many to attend to, that the Postmaster-General, the executive agent of the Government, was permitted, under the authority of an act of Congress, to make as many postal conventions as were necessary.

Senator BAILEY. I observed that, and that was one of the things that moved me to make this inquiry. It does not seem to me a sufficient reason for the Senate, either to abdicate its treaty power or to share it with the House, that it is somewhat inconvenient to make a treaty as occasion arises. I have no question that the law can authorize any executive officer of this Government to execute a contract which the Government has made or to execute any other law, but I very seriously doubt if a law of Congress can authorize any officer of

this Government to make a contract with a foreign government which is in essence a treaty.

Senator SPOONER. Well, it can not. But then the Secretary, as I understand it, disclaims utterly any purpose to do anything or any understanding that he was doing anything which would fall within the definition of or be embraced by the word "treaty," as used in the Constitution, and it is used there generically. Now, of course, as he says, a treaty is to be administered as a law and as a compact, and when the United States enters into a treaty with another power the administration of it may involve diplomatic arrangements as to construction, and all that. He claims, as I understand it, the authority, under the act of Congress, for the construction of the canal, and under the treaty to make this business arrangement.

Senator HALE. Let me see, Mr. Secretary, if I get just what may have been in your mind. The administration of the canal had been turned over to you?

Secretary TAFT. Yes, sir.

Senator HALE. You were conducting it administratively?

Secretary TAFT. Yes, sir.

Senator HALE. It had formerly been with the Secretary of State, in a form?

Secretary TAFT. No, sir. I tried to get it transferred to the Secretary of State, but the Secretary of State was wise enough to decline.

Senator HALE. Now, let me see whether you had this in your mind as you were dealing with it, administratively, with the power to make these contracts; that your idea may have been that if you transferred the power and turned it over to the State Department, which conducts matters by making treaties, it was thereby indicating that this would have to be subjected to the treaty-making power, which was not needed?

Secretary TAFT. Yes, sir; that was exactly the way my mind ran; and I may add, moreover, that I wanted to explain to these gentlemen with whom I was dealing the limitations on my power. I did not want to mislead them into supposing that I was making a formal treaty binding the United States, or anything of that sort. I wanted to explain to them that this was a subsidiary agreement.

Senator SPOONER. This would have been terminable at any time?

Secretary TAFT (continuing). A tentative arrangement, as the Senator says, which would have been terminable at any time. With reference to this question of the delegation of power, Senator Bailey, I have had occasion once or twice to look into the limitations on that, and possibly I would differ, as a lawyer, with some of the views expressed on the Senate floor, and if the committee is at all interested in my views on that subject, I can submit to the committee an address that I delivered at the commencement of the Cincinnati Law School about two years ago in regard to this matter of delegated power.

Senator BAILEY. I would like to see it.

The CHAIRMAN. We would all like to see it.

Senator BAILEY. I would regard that as not only vastly important, but as a very live question just now. I realize, as the Senator from Wisconsin says, that there are arrangements between governments which are not treaties. I do not like to say that there are agreements which are not treaties. I know that it is contended that while every treaty is an agreement, every agreement is not a treaty. But when

you once begin to acknowledge that agreements may be made between governments without reference to the treaty-making power, I apprehend you are on rather dangerous ground, and I prefer to call them arrangements.

I raise no question about your right to make what we will call the exchange agreement; I mean the bankers' agreement.

Senator TELLER. That would be called an arrangement between the two countries.

Senator BAILEY. That was not an arrangement with the Government as to a governmental matter; it was purely a business matter.

Secretary TAFT. It was exactly as if the Republic of Panama was a business corporation and a great customer of the banks down there, and therefore this business became important to the bankers down there. By uniting the three great customers of the banks down there it became possible, in my judgment, to get a better agreement with the bankers than we could have gotten if we had made separate agreements.

Senator BAILEY. I was moved to ask the question merely and solely because I was not willing to concede, by passing it without a question, that an agreement could be made without reference to the Senate when conducted and concluded by the Secretary of War, when the same agreement, if made with the Secretary of State, would have been a treaty.

Secretary TAFT. I did not intend to convey any such meaning.

The CHAIRMAN. There is more or less an inference of that in what you said, I think, Mr. Secretary.

Secretary TAFT. It is possible.

Senator TELLER. I would like to ask the Senator from Texas to distinguish for us between an agreement and an arrangement. For the proper discussion of this arrangement it seems to me that we ought to know what the difference is.

Senator BAILEY. Well, Mr. Chairman, it is not so important to the committee that I should do that; but I think I can very easily. For instance, two governments might make a treaty for the extradition of persons charged with a crime, we will say. Now, I would think that the officers of the governments in executing that treaty might agree as to certain forms of procedure.

Senator TELLER. That would be a construction of that treaty?

Senator BAILEY. No, sir; it would be putting it into execution.

Senator HALE. It would be the operation of it.

Senator BAILEY. Yes, sir. I think if two governments should agree that one would pay the other a sum of money to be disbursed among its citizens on claims against the responding government they then might agree whether that money should be paid in coin or exchange, or whether it might be paid at one place or another. In other words, the treaty is a law which can only be the supreme rule of conduct in this land when ratified by the Senate. The details are merely the execution of the law.

Senator TELLER. I agree to that.

Senator BAILEY. That is all I meant.

Senator TELLER. With that I am not disposed to quarrel.

Senator BAILEY. I never have yet been able to say that an agreement which becomes a rule of conduct and therefore within the defini-

tion of the law can be made between this Government and any other government, except by the approval of the Senate.

The CHAIRMAN. That is right, and whether it is a question of agreement or arrangement or what else it all comes within the same category.

Senator SPOONER. That is undoubtedly an accurate and absolutely irrefutable statement of the real proposition, and that is that no agreement which would fall within the meaning of the word "treaty," as used in the Constitution, can be made except with the participation of the Senate. I have been bothered a good deal by this subject. It is hard to answer your question, Senator Teller—that is, it is hard to draw the line between the agreements that are treaties and the executive or administrative agreements, which are temporary in their nature, which bind only the administrative departments of the Government, which are honored for the time, which are absolutely necessary, and yet which are not laws of the land or, strictly, compacts within international law.

The word "treaty" is used three times in the Constitution, not simply once. It is used where the treaty-making power, the power to make treaties, is vested in the President and the Senate. It is used where treaties are declared to be supreme law of the land. The court has held that the word "treaty" comprises every agreement which was known as a treaty and executed with the formalities attending the execution of a treaty, by international law and by international custom, when the Constitution was adopted. It is generic.

It is used in a third place, and it is undoubtedly used in the same sense:

No State shall enter into any treaty, alliance, or confederation—

Now, that word "treaty" is used there in exactly the same sense in which it is used in the other case. That was one of the objects, to take away from the States the power which it had, prior to the adoption of the Constitution, to make treaties.

But that is not all there is to it. One would think that is complete enough, but it is not all there is to it. Here in the same section we find—

No State shall, without the consent of Congress—

Of course the consent of Congress can not authorize a State to make a treaty, but here is something that the consent of Congress can authorize it to do. It is only valuable as affording a construction, somewhat, of the word, and as bearing on the question whether there may not be an agreement within the constitutional sense which is not a treaty. This reads:

No State shall, without the consent of Congress, enter into any agreement or compact with another State or with a foreign power.

If you will look at the opinion of Chief Justice Taney in the case of Holmes *v.* Jennison (14 Peters, p. 570–573), which goes very fully into the subject, you will see that in the first place he lays down beautifully the rule that every word in the Constitution is conclusively presumed to have been inserted there with definite purpose; that there is no tautological or superfluous word in the instrument; that each is to have given to it import; and he deals first with the treaty-

making power, the power to make that which is the law of the land, and also at the same time a foreign compact. He deals with this, and he points out those compacts, agreements, and so forth, which at the time the Constitution was entered into were treaties.

The Constitution clearly implies that there may be agreements which were not intended by the Constitution to be treaties?

Senator HALE. Under that clause, which seems to me to be a careless one——

Senator SPOONER. It may be, but it is there.

Senator TELLER. No; it is not careless.

Senator HALE (continuing). Has there ever been any instance of a State, under that clause, claiming the right to make, or applying to Congress for power to make, an agreement with a foreign power? Has any State ever tried to make, or asked leave to make, an agreement aside from the treaty-making power?

Senator SPOONER. I do not know whether there has ever been any such instance or not.

Senator HALE. It has always seemed to me that that is a careless clause.

Senator TELLER. I have always understood that that was inserted there really for the satisfaction of some of them, when the States were believed to be surrendering too much to the Federal Government; that that was one of the sops that was thrown in to satisfy some of them; and it has never been tested, that I can find, anywhere. I think Mr. Justice Taney's opinion there covers the ground pretty thoroughly, and it seems to me it makes every agreement and every compact with a foreign power a treaty. But when, having made a treaty with a foreign power, questions arise in carrying it out, those may be properly called arrangements. There must be arrangements made to carry out an agreement; so that I would not say that you could not make an arrangement; but you must make it based upon some existing law. When the question of construction arises between the governments that have made a treaty, there may be difficulty as to that. Now, I agree that the two governments might agree upon the construction. If it involved practically a change, then it would be a new treaty.

Senator SPOONER. Oh, of course.

Senator TELLER. But if it is an exposition simply of what is there, then that does not need the consent of Congress.

Senator SPOONER. When you admit, as you must, that no State can make a treaty even with the consent of Congress, and that States may, with the consent of Congress, make *agreements* with foreign powers, there must be something in the proposition that there are agreements that are not treaties.

Senator TELLER. It is pretty certain that that was not meant, because there has never been any attempt to carry it out, but it was a sort of a giving way—saying, "Now, if it becomes necessary for you to do this, Congress will allow you to do it."

Senator BAILEY. Well, it might be, it may be, necessary that Texas should make an agreement with Mexico. There might be an occasional instance where they might want to make an agreement purely affecting Texas. Take any of the border States, and it might happen. The remarkable thing is that when they framed that Constitution they provided for almost every contingency that could arise.

Senator HALE. Do we not make agreements, every now and then, without regard to the treaty-making power, for settling boundary questions?

The CHAIRMAN. No; I do not think so.

Senator HALE. Where originally there was a treaty?

Senator ALLISON. We do for surveys.

Senator HALE. We have had agreements by joint commissions, but that was only in the operation of the treaty.

Senator BAILEY. Two States may make an agreement between themselves about their boundaries.

Senator ALLISON. They have done so, and made surveys.

Senator TELLER. Suppose we make an arrangement, and we have to have the line run between Texas and Mexico. Now, we pass a law, and we have to consult Mexico, and all the details of that come under what the Senator calls an arrangement, and it is not necessary, in my judgment, until you find there is some defect in your treaty, and you want to enlarge it somewhat, to go to Congress, and then you must go to Congress.

Senator SPOONER. I am not absolutely sure that I would agree to your proposition of a day or two ago—that under no circumstances can a modus vivendi be entered into without the consent of the Senate. Take the question of a disputed boundary, where it might be necessary to have some "mode of living" in order to avert collision and friction and bad blood. The only definition that I have found of modus vivendi is that it is a temporary arrangement for the conduct of relations pending the negotiation of a treaty upon that particular subject. It is not in any sense a treaty. It is not binding on the Government.

Senator TELLER. Yes; it may be binding on the Government.

Senator SPOONER. No; unless ratified.

Senator TELLER. What you call the modus vivendi is easily abused. There is such a thing as a modus vivendi. For instance, we have an agreement with Great Britain about Canada and there is a ruction on each side of the line. The Government may properly agree with Canada that the thing shall stand in statu quo until such time as we can conclude a treaty. That is a modus vivendi.

The CHAIRMAN. That is exactly what was done in the case of the Canadian boundary line.

Senator TELLER. It is simply indicative of the fact that you are standing still; but when you extend the modus vivendi to the operations of the Government that is a different thing.

Senator HALE. When you extend it to the subject-matter you have in a treaty, you have something entirely different.

Senator TELLER. Yes.

Senator SPOONER. The case of Holmes *v.* Jennison arose in Vermont. A Canadian had committed murder in Canada, and his whereabouts were ascertained, and he was arrested by the Vermont officials upon an application or request from Canada and incarcerated pending extradition. He sued out, through his lawyer, who was a very able man, a writ of habeas corpus. He had committed no offense in Vermont, he said, and Vermont had no power to hold him for extradition, because Vermont was not intrusted by the Constitution of the United States with the function of extraditing criminals or

fugitives to a foreign country. The case went to the supreme court of Vermont, and that court held that the detention was legal, and that he should be turned over by Vermont to the Canadian authorities. The prisoner brought the case by habeas corpus or writ of error, I have forgotten which—I think it was habeas corpus—to the Supreme Court of the United States. That was what brought about the discussion by Chief Justice Taney of this subject, and he held that the power to surrender criminals was a part of the treaty-making power.

Senator TELLER. Undoubtedly.

Senator SPOONER. And that that had been committed entirely to the Federal Government and it was impossible for Vermont lawfully to turn over this man to Canada.

Senator TELLER. That is good law.

Senator BAILEY. I want to afford the Secretary opportunity to say that he did not intend to imply that the Secretary of War alone could make an agreement when the same agreement made by the Secretary of State would require a ratification by the Senate.

Secretary TAFT. I will take the opportunity.

Senator BAILEY. In view of the fact that these notes which were submitted by you are to be published, I am sure you do not want to appear as contending that.

Secretary TAFT. With reference to these notes, I want to say that I felt, as I was called before the Senate committee, I must give them just as they were.

Senator BAILEY. That was proper.

Secretary TAFT. And if I had ever thought, at the time of their being taken, that the matter was going to be examined of course I should have gone over the notes to correct that and should have taken care to state just exactly what I had in mind.

If I may be permitted—leaving out altogether the question whether a modus vivendi can be conducted without a treaty and without authority—I would say that I think that when Congress and the Senate, by law and treaty, too, put an executive officer in a position where it becomes his duty to do something in a foreign country, the doing of which necessarily involves temporary arrangements in order to enable him to carry out that duty, then there may be power to establish a modus vivendi.

Senator SPOONER. That is not a modus vivendi in a large sense.

Secretary TAFT. I am treating it according to its literal definition, as a manner of living together.

Senator SPOONER. Well.

Secretary TAFT. The word "together" must be understood. It is a method of getting along.

Senator TELLER. A method of getting over this difficulty; that is what it is.

Secretary TAFT. Yes, sir. And it is on the theory that there was given to us by virtue of the action of the Senate, by virtue of the action of the House, a duty to perform in Panama, that thereby we acquired this authority to make these temporary arrangements. That is all I claim. And to say that one officer can do a thing and another can not, and thus deprive the Senate of its constitutional power, of course I do not claim that at all, and I should not like what I said to be so construed.

The CHAIRMAN. There is one element of this agreement that has not been touched upon. You very frankly state to us that you think, so far as the legal-tender provision is concerned, it ought not to have been there; but there is also a provision there by which the executive officer entered into an agreement with the State of Panama to maintain, in various ways, the parity of their money. Now, do you think that an executive officer can enter into an agreement with a foreign government by which we agree to assist in maintaining the parity of their money?

Secretary TAFT. Yes, sir; I think so in this, that where we are very much interested as executive officers in the maintenance of a stable currency, and where we have under any circumstances the necessity of drawing drafts on the United States and the use of those drafts will necessarily affect the parity and the conduct of the executive under that, I think the executive may agree so to discharge that duty as to assist in the maintenance of parity.

The CHAIRMAN. Do you think that we could have made an agreement with Mexico, for instance, by which we could have agreed to maintain a fixed value for the Mexican coin in the Philippines? Do you think that any executive officer of the Government could have done that?

Secretary TAFT. No, sir.

The CHAIRMAN. Wherein is the difference?

Secretary TAFT. Mexico is 7,000 miles away from the situs, the place in which the duty of the executive officer is to be performed.

The CHAIRMAN. Still, the Mexican coin was the regular coin used there, was it not?

Secretary TAFT. Yes, sir; but I do not think the Mexican coin and its presence in the Philippines are in the slightest degree analogous to the case of an agreement as to the coin that is to circulate inside of the zone in which we are to perform our duties and, indeed, where we are under the sovereignty of another government by virtue of the law and the treaty.

Senator BAILEY. I was coming right to that point.

The CHAIRMAN. I beg your pardon.

Senator BAILEY. I was going to say, so far as the exchange agreement—the agreement to buy and pay for it in a certain kind of money—was concerned, I have no question of it. And so far as that assisted in maintaining the parity it was rather an effect under the law, although the purpose might have been to maintain it. But you were maintaining it by an indirect means.

Senator SPOONER. You have got it. That is right.

The CHAIRMAN. But the original agreement did contain an agreement with the Government of Panama that they would assist in maintaining the parity.

Senator SPOONER. That is, that they would adapt the financial course and business of the Commission so that it would operate to assist in maintaining the parity.

The CHAIRMAN. It seems to me that is drawing a rather fine line. If they can do it in one way, why can they not do it in another?

Senator TELLER. It was more than an agreement to assist. It was that they agreed to maintain. We agreed to maintain a 40 per cent peso up to 50 cents in our money.

Senator BAILEY. I do not believe they would have the authority, generally, to agree that they would do all things necessary to maintain the parity. It seems to me clearly that they have not. I do believe, however, that they would have the authority to say, "As we must make payments here, we will agree to make those payments in your coin, or we will agree to buy exchange," because all of that was in pursuance of their authority to make these payments to the laborers and for other purposes. There you have a direct authority. Even though it is implied, it involves a direct authority to make payments, and you have a right to select the manner in which you make them, whether you make them in coin of one kind or another. Of course if you made them in anything except the legal-tender coin established by Congress you could only make them as people would agree to receive it. But when you go further and commit the Government of the United States to an obligation to maintain the parity of the coin of a foreign country, then I think you exceed your power.

Secretary TAFT. May I call your attention to the language of two clauses here?

Senator DANIEL. Will you kindly call attention to the language that is now being discussed?

Secretary TAFT. It is right in this clause which I am going to read:

The United States shall employ such silver coins in its disbursements in the Canal Zone and in the Republic so far as the United States may find it practicable and convenient.

The CHAIRMAN. I think you have the right to do that.

Senator BAILEY. To select the coin in which payments will be made?

Secretary TAFT. It says further:

The Isthmian Canal Commission shall cooperate——

not that it shall establish, but that it shall cooperate.

It reads:

The Isthmian Canal Commission shall cooperate with the Republic of Panama to maintain the parity of the fractional silver coinage of the Republic of Panama with the gold standard by sale of drafts upon its funds at reasonable rates and on terms which will tend to prevent the disturbance of such parity.

Senator SPOONER. You can do that; you have a perfect right to do that.

Senator BAILEY. Yes.

Secretary TAFT. We do not agree to maintain the parity, but we agree in the sale of these drafts, which we have to sell anyhow, to cooperate in the furtherance of this object.

Senator DANIEL. Is that anything more than a declaration of your policy in the administration of the Isthmian Canal?

Secretary TAFT. It occurs in a letter which I wrote. I wrote to them for the purpose of inducing——

Senator DANIEL. Where is that letter?

Secretary TAFT. This is the letter, saying what I intended to do for the Commission, so long as I had control of the policy of the Commission.

Senator DANIEL. I want to ask this question: As I understand it, this is your declaration to the fiscal commission of the Republic of Panama?

Secretary TAFT. Yes, sir.

Senator DANIEL. In which you declare what will be the policy of the Isthmian Canal Commission?

Secretary TAFT. Yes, sir.

Senator DANIEL. They had power to make all their arrangements?

Secretary TAFT. Yes, sir..

Senator DANIEL. Is that anything more than a declaration that you would cooperate in a friendly way with them, in order that the parity of a fractional currency should be maintained?

Senator BAILEY. It is more than a policy.

Senator MONEY. That is what is the trouble.

Senator DANIEL. He does not agree that he will maintain the parity, as I understand it.

Secretary TAFT. As I understand the effect of the agreement, as I read it now, it was that the course—the executive course which was enjoined upon us—would be so shaped as to cooperate to maintain the parity.

Senator SPOONER. You say here how you will cooperate. You say:

> I agree (that) * * * the Isthmian Canal Commission shall cooperate with the Republic of Panama to maintain the parity of the fractional silver coinage of the Republic of Panama with the gold standard by sale of drafts upon its funds at reasonable rates and on terms which will tend to prevent the disturbance of such parity.

That explains it all.

Senator HALE. It is not declared that he will maintain the parity.

Secretary TAFT. No, sir.

Senator HALE. But with a view that it will be maintained he will do certain things which will operate in that way.

Secretary TAFT. Yes; with a limitation that it should be reasonable.

The CHAIRMAN. You would not agree that the Commission would have the power to agree to maintain the parity?

Secretary TAFT. No, sir.

The CHAIRMAN. That is the point that I wanted to get your understanding on.

Secretary TAFT. Not at all.

Senator DANIEL. I understand from this, Mr. Taft, as I read your declaration of the proposition of the Republic as to making the United States currency legal tender, and also its own currency legal tender, on the same basis, that in brief is the proposition——

Secretary TAFT. It makes the American gold dollar a legal tender just as well as the dollar which it is proposed by them to coin.

Senator ALLISON. They make it a full legal tender?

Secretary TAFT. Yes, sir.

Senator DANIEL. As I understand, the Canal Commission was to predicate its making the gold and silver coin of the Republic of Panama legal tender dependent upon the Government of Panama having first made the coin of the United States legal tender and having complied with the other requirements set forth in the agreement?

Secretary TAFT. Yes; that is what I understand; but I do not claim that I had the power to make any such agreement.

Senator DANIEL. I understand that.

Secretary TAFT. It is put in there, and, as I said in my evidence here, it is there; but it is a mistake that it is there.

Senator DANIEL. I just wanted to see if I understood the correlation of this thing.

Senator TELLER. I spoke of the modus vivendi. Of course somebody could come back and say that there are cases where you do make those things, and they are absolutely necessary. In case of a conflict between nations they make those things and put them in force, but that is exceptional, and that does not arise out of the constitutional authority, but arises out of the general law of nations. With that exception I should stand by what I said.

Senator BAILEY. In a nation which has no constitutional requirement that a treaty shall go to a particular body, but follows the general rule that the executive can not make a treaty, the question does not arise.

Senator TELLER. When our armies were in Mexico we made an arrangement with Mexico. That was not submitted until long after, when the treaty was made. It was necessary, to close up the war and stop the hostilities, that something should be done as to the contending forces down there. That is an exceptional case, and that is not an authority that arises under the Constitution. That is something that arises from the law of war, which has been in force ever since men had wars.

Senator HALE. You can not get any better definition of "modus vivendi" than the literal translation of it. All that it means is that you shall continue to live just as you are until there is some cause for change. And to substitute for the right to establish a modus vivendi, a right to establish something that is absolute and complete—a treaty, or the terms and provisions of a treaty—which must be considered by the two parties before it is perfected and must be approved by the Senate—this is not a modus vivendi.

(Thereupon, at 11.50 o'clock a. m., the committee went into executive session, at the conclusion of which, at 12.40 p. m., the committee adjourned.)

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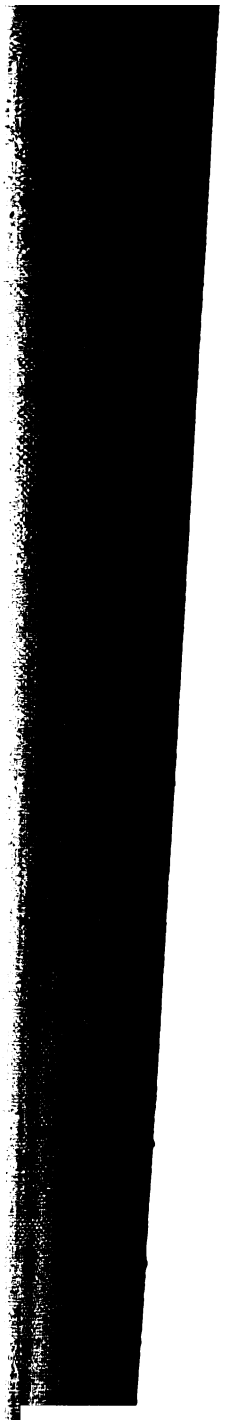

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